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CONCERNING THE

# IMPEACHMENT OF CHARLES SWAYNE

JUDGE OF THE NORTHERN DISTRICT OF FLORIDA



Printed for the use of the Committee on the Judiciary  
House of Representatives of the  
Sixty-Second Congress  
(Second Session)



*Swayne*

WASHINGTON  
GOVERNMENT PRINTING OFFICE

1912

611.00

## COMMITTEE ON THE JUDICIARY.

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# IMPEACHMENT OF JUDGE CHARLES SWAYNE.

HOUSE OF REPRESENTATIVES, *December 10, 1903.*

[Congressional Record, volume 38, part 1, pages 95 to 103.]

Mr. LAMAR of Florida. Mr. Speaker, I rise to a question of privilege.

The SPEAKER. The gentleman will state it.

Mr. LAMAR of Florida. Mr. Speaker, I believe that the impeachment of a civil officer by this House is a question of privilege. I have made a joint resolution adopted by the Legislature of the State of Florida a part of the resolution which I desire to submit to this House for its adoption. In pursuance of this joint resolution of the legislature of the State which I have the honor in part to represent, I impeach Charles Swayne, judge of the northern district of the State of Florida, of high crimes and misdemeanors; and the resolution which I have prepared in accordance with former proceedings of this House in like cases I desire to have read by the Clerk for the information of the House.

The SPEAKER. The Clerk will report the resolution.

The Clerk read as follows:

[H. Res. 86.]

Whereas the following joint resolution was adopted by the Legislature of the State of Florida:

Senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida.

*Be it resolved by the Legislature of the State of Florida:*

Whereas Charles Swayne, United States district judge of the northern district of Florida, has so conducted himself and his court as to cause the people of the State to doubt his integrity and to believe that his official actions as judge are susceptible to corrupt influences and have been so corruptly influenced;

Whereas it also appears that the said Charles Swayne is guilty of a violation of section 551 of the Revised Statutes of the United States in that he does not reside in the district for which he was appointed and of which he is judge, but resides out of the State of Florida and in the State of Delaware or State of Pennsylvania, in open and defiant violation of said statute, and has not resided in the northern district of Florida, for which he was appointed, in 10 years, and is constantly absent from said district, only making temporary visits for a pretense of discharging his official duties;

Whereas the reputation of Charles Swayne as a corrupt judge is very injurious to the interests of the entire State of Florida, and his constant absence from his supposed district causes great sacrifice of their rights and annoyance and expense to litigants in his court;

Whereas it also appears that the said Charles Swayne is not only a corrupt judge, but that he is ignorant and incompetent and that his judicial opinions do not command the respect or confidence of the people;

Whereas the administration of the United States bankruptcy act in the court of said Charles Swayne and by his appointed referee has resulted in every instance in the waste of the assets of the alleged bankrupt by being absorbed in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is, in effect, legalized robbery and a stench in the nostrils of all good people:

*Be it resolved by the House of Representatives of the State of Florida (the Senate concurring), That our Senators and Representatives in the United States Congress be,*



and they are hereby, requested to cause to be instituted in the Congress of the United States proper proceedings for the investigation of the proceedings of the United States circuit and district courts for the northern district of Florida by Charles Swayne as United States judge for the northern district of Florida, and of his acts and doings as such judge, to the end that he may be impeached and removed from such office.

*Be it resolved further*, That the secretary of state of the State of Florida be, and is hereby, instructed to certify to each Senator and Representative in the Congress of the United States, under the great seal of the State of Florida, a copy of this resolution and its unanimous adoption by the Legislature of the State of Florida.

STATE OF FLORIDA,  
OFFICE OF THE SECRETARY OF STATE.

UNITED STATES OF AMERICA, *State of Florida*, ss:

I, H. Clay Crawford, secretary of state of the State of Florida, hereby certify that the foregoing is a true and exact copy of Senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida, passed by the Legislature of Florida, session of 1903, and on file in this office.

Given under my hand and the great seal of the State of Florida at Tallahassee, the capital, this the 7th day of September, A. D. 1903.

[L. S.]

H. CLAY CRAWFORD,  
*Secretary of State.*

*Resolved*, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the official misconduct of Charles Swayne, judge of the United States District Court for the Northern District of Florida, and say whether said judge has held terms of his court as required by law; whether he has continuously and persistently absented himself from the said State; and whether his acts and omissions in his office of judge have been such as in any degree to deprive the people of that district of the benefits of the court therein to amount to a denial of justice; whether the said judge has been guilty of corrupt conduct in office; and whether his administration of his office has resulted in injury and wrong to litigants of his court.

And in reference to this investigation the said committee is hereby authorized and empowered to send for persons and papers, administer oaths, take testimony, and to employ a clerk and stenographer if necessary, to send a subcommittee whenever and wherever it may be necessary to take testimony for the use of said committee. And the said subcommittee while so employed shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall serve the processes of said committee and subcommittee and execute its orders, and shall attend the sittings of the same as ordered and directed thereby. And that the expense of such investigation shall be paid out of the contingent fund of the House.

Mr. LAMAR of Florida. Now, Mr. Speaker, this formal arraignment of Judge Swayne for misconduct and criminal conduct in office does not come to this House with the informal, as it were, presentation by private memorial or a private petition, but it comes here with the full sanction and full force of an arraignment of a judge yet in office for conduct which, if proven, will subject him to impeachment and removal from office, and that arraignment and accusation is led by the legislative department of the State of Florida. I have gone over, Mr. Speaker, with some care, the precedents in like cases in this House in times past, from the earliest course of procedure, and I think it is entirely proper, and hope the House will let it take that course. I move the adoption of the resolution.

The SPEAKER. The question is on agreeing to the resolution.

Mr. GROSVENOR. Mr. Speaker, I think there ought to be no haste upon a question of as vital importance as this one is. On the face of all these papers there is no impeachment proved; that is, no ground of impeachment is charged. I have not gone over the cases as the gentleman from Florida says he has. He may be entirely right about it, but I wish he would give us some information upon what has been the practice heretofore.

Now, the result of all this will be for the House to practically indorse these allegations which are not in the form of charges. My understanding is that in cases of impeachment there should be specific charges made by the Member seeking impeachment. The legislature of a State can not come into the House of Representatives and impeach or proceed to impeach the Federal officeholder. It must be done by a Member of this House upon his official prerogative. This series of resolutions of the Florida Legislature are impertinent and without legal effect.

I can recollect several cases that are familiar to everyone. Take, for instance, the impeachment of Andrew Johnson, which followed a form coming down to us from the English Parliament in the case of Warren Hastings, where the Member rising to make the impeachment made the charges specifically, upon which action was sought to be taken. No Member of this House has indorsed these specifications, if they are specifications, which I think they are not. I warn the House that we ought to be at least very careful about the mode and manner of this procedure. If this can be legally carried on in the present form, then the legislature of any State can come into the House of Representatives and inaugurate or precipitate an impeachment proceeding against anybody subject to the jurisdiction of the House.

I think, Mr. Speaker, that there ought to be charges specifying what it is that the judge is charged with doing. To say that a judge of one of our courts does not know enough to be a judge is hardly a specification. It is a good argument to apply to the appointing power, and, if he is an elective man, it is a good argument to apply to the electorate, but there is here no charge against this officer that, if proved, could result in his impeachment in the Senate. I think the Senate should send back these documents and declare by resolution that there is no foundation laid for them to proceed to the impeachment of this man.

I know nothing about this case, never heard of the judge, never heard anything connected with it until now; but I wish the gentleman from Florida would state why it is that specific charges upon which the officer ought to be tried have not now been brought here and given to the country. We are not a grand jury to seek for information upon a subject of this character. There ought, at least, to be a *prima facie* case alleged in the charges before they go to any committee of the House to investigate it.

Mr. SMITH of Kentucky. Will the gentleman from Ohio yield for a question?

Mr. GROSVENOR. Certainly.

Mr. SMITH of Kentucky. I want to know if the gentleman's view is that the Member from Florida offering this resolution should undertake to state the evidence of the charges or simply to make a direct charge himself.

Mr. GROSVENOR. Make the direct charge, the form being "I impeach Charles Swayne of high crimes and misdemeanors for the following reasons:" First, second, and so on. There is nothing of that kind here. There is a series of resolutions that are not recognized as a part of any formality of this character adopted by the Legislature of Florida. They are entitled to great respect, being the resolutions of a sovereign State, and entitled to respect as coming from the gentleman

himself; but it seems to me there is no ground laid here that could authorize the procedure asked for.

Mr. LACEY. Will the gentleman from Florida yield for a question?

Mr. LAMAR of Florida. Certainly.

Mr. LACEY. I would like to ask the gentleman if he does not think the better practice would be to have this resolution referred to the Committee on the Judiciary before having the House act upon it and passing the resolution, so that there might be that preliminary investigation which would enlighten the House as to details?

Mr. LAMAR of Florida. Why, the motion is only to adopt the resolution, and the resolution submits the matter to the Judiciary Committee for its report. This House does not commit itself.

Mr. LACEY. The resolution recites a number of things that the House ought not to adopt until it first hears from a committee after the committee has investigated the matter.

Mr. LAMAR of Florida. Mr. Speaker, the greater includes the less——

Mr. GROSVENOR. Let me make a suggestion to the Member from Florida. I do not want to impede the proceeding upon this question; but is not the gentleman willing that this resolution, which, as it now appears, is undoubtedly privileged, shall go at once to the Committee on the Judiciary, that they may report whether in their judgment there is really any ground for action by the House? The gentleman, as I understand—he can correct me if I am wrong—wants the House to vote now upon this resolution.

Mr. LAMAR of Florida. The motion is to adopt this resolution for reference to the committee.

Mr. GROSVENOR. Well, I object to that. Let the whole question go to the committee. If the gentleman will accept my good faith in this matter as cordially as I do his, it seems to me that he should be willing to have the proposition go to the Committee on the Judiciary, letting them report it back as soon as possible, the House then to act upon the report as it may deem best.

Mr. LAMAR of Florida. In a proceeding similar to this there was a resolution offered in the nature of an arraignment or impeachment, which resolution, being inartificially and untechnically drawn, went to the Judiciary Committee. The committee simply changed the phraseology and reported the resolution back to the House, directing the impeachment.

Now, in this proceeding, the House is simply asked to adopt a formal resolution referring the matter of the impeachment of Judge Swayne to the Judiciary Committee, authorizing that committee to inquire whether he has been guilty of certain charges; and to enable them to make their inquiries they are authorized to sit here or elsewhere, by subcommittee or full committee, accompanied by the Sergeant at Arms or his deputy, to administer oaths, to take testimony, and upon that to make report to the House.

Mr. COOPER of Wisconsin. There is some dispute among Members here as to just what this resolution declares. I suggest that the resolution be read again.

Mr. LAMAR of Florida. I ask that the Clerk reread the resolution adopted by the Legislature of Florida.

The resolution was again read.

Mr. LAMAR of Florida. As I understand, the objection made by the gentleman from Ohio [Mr. Grosvenor] is that I do not charge Judge

Swayne with any specific crime. I do charge him generally with high crimes and misdemeanors. Why should I be forced to state, when the proof is to be submitted to the Committee on the Judiciary, the specific matters upon which that general allegation is made? Every single crime that this judge is capable of committing is charged when I charge him on this floor with the commission of high crimes and misdemeanors; but if the gentleman desires that I shall make my charges seriatim, I charge this judge, first, with continued, persistent, and, if you please, pernicious absenteeism from his district; second, with corrupt official conduct, based upon several matters——

Mr. OLMSTED. Will the gentleman permit an inquiry?

Mr. LAMAR of Florida. I will yield to the gentleman in a moment. Third, I charge Judge Swayne with maladministration of judicial matters in his court, so much so as to embarrass bankrupts and annihilate the assets of litigants and others appearing within his jurisdiction. If this is sufficient, Mr. Speaker, to meet the requirements of the gentleman from Ohio, I shall be glad.

Mr. OLMSTED. Now, will the gentleman yield? I simply want to ask him whether his charge is not a very general charge, without any specific instance being alleged, and whether his request is not that the Committee on the Judiciary investigate to ascertain whether they can find some specific charge which can be maintained?

Mr. LAMAR of Florida. Mr. Speaker, this is simply a resolution to be adopted by this House, if it sees fit, to refer this whole matter with such proofs in writing as are already in my possession to be submitted; that the committee be authorized to sit in this city or Pensacola, Fla., or at any other point within the district, and take testimony, following the usual course of procedure to arrive at the facts, and then, if the facts warrant, that the committee shall make report to the House, which report, of course, will be subject to adoption or rejection by the House. This resolution does not propose to try Judge Swayne here on the prima facie case as presented in the resolution; it does not asperse him more than any accusation of crime must necessarily do. The proposition is simply to authorize the committee to take testimony, so that it may be enabled to report to the House whether Judge Swayne ought to be arraigned upon this impeachment. That is the simple purpose of this resolution.

Mr. LACEY. Mr. Speaker——

The SPEAKER. One moment. The Chair believes there was unanimous consent given to have the resolution again reported.

Mr. LAMAR of Florida. Mr. Speaker, I ask that the resolution on the third page of the papers I sent to the desk, containing the directions to the committee, be again read.

The SPEAKER. Without objection, it will be reported.

There was no objection.

Mr. LACEY. Mr. Speaker, one moment. I desire to make a motion, so that it may be pending while this is being read. I move to refer this entire resolution to the Committee on the Judiciary.

The SPEAKER. The motion is in order.

Mr. LAMAR of Florida. Mr. Speaker, that is identically my motion—to refer this matter under the formal instructions by the House embodied in my resolution, to be reported back by the committee to this House. That is the very gist of the whole matter.

Mr. LACEY. A general order of reference would cover the entire matter.

Mr. BURLISON. Let us have the resolution read.

The SPEAKER. The Chair will state that if a point is made against the motion of the gentleman, he will decide it. In the meantime, unanimous consent having been granted for the reporting of the resolution, the Clerk will read it.

The Clerk again read the resolution.

Mr. LAMAR of Florida. Mr. Speaker, I think that resolution referring the whole matter to the Judiciary Committee, empowering it to take such means as will enable it to make a well-informed report to the House, is all that is required by the facts and nature of the case; and that is the gist of the resolution, nothing more and nothing less. I therefore renew my motion that the resolution be adopted by this House.

Several Members rose.

The SPEAKER. The Chair recognizes the gentleman from Iowa.

Mr. LACEY. Mr. Speaker, I insist upon my motion as a privileged motion.

Mr. PAYNE. Mr. Speaker, I would ask the gentleman to withdraw his motion for a moment.

Mr. LACEY. Very well; I withdraw it for a moment.

Mr. PAYNE. Mr. Speaker, while I do not know this judge and am not yet informed of a single act of which he is charged imputing any high crime or misdemeanor, except perhaps that with reference to his nonresidence in the district, still I think we ought to be careful of his rights as well as of our own in this matter. If the humblest citizen of the United States were to be accused of crime before a magistrate or before a grand jury, some specific charge would be made. If a judge is to be impeached, if we are commencing those proceedings, there ought to be some specific charge. The gentleman from Florida [Mr. Lamar] accuses this judge of high crimes and misdemeanors. That is a very general accusation. He accuses him of being a corrupt judge. That is a general accusation.

If he has been corrupt in the exercise of his judicial functions, then it certainly is within the power of the gentleman from Florida to state wherein he has been corrupt; that he has at a certain time or on a certain occasion received corruptly some money or thing of value to influence his decision, and has corruptly decided in certain matters pending before him. In view of these considerations, it seems to me the most that the House ought to do is to adopt the motion made by the gentleman from Iowa [Mr. Lacey], referring these resolutions to the Committee on the Judiciary, and have that committee report whether, under the circumstances and facts produced before it, or the specific allegations which the gentleman from Florida may make to that committee, this resolution ought to be adopted inaugurating this inquiry to find out whether crime has been committed.

Mr. TAWNEY. Mr. Speaker, I would like to ask the gentleman from New York a question.

The SPEAKER. Does the gentleman from New York yield to the gentleman from Minnesota?

Mr. PAYNE. I yield to the gentleman from Minnesota.

Mr. TAWNEY. A statement has been made in the vicinity of where I sit that if this was referred under the motion of the gentleman from Iowa [Mr. Lacey] the committee could do nothing at all.

Mr. PAYNE. Except report the resolution or amend it.



Mr. TAWNEY. I want to ask if it is not a fact that the committee would have jurisdiction of the whole subject and could report to the House the action that should be taken?

Mr. PAYNE. That committee would have to report this resolution with amendment or amendments germane to the resolution. I do not think it could go on and inquire and report impeachment proceedings.

Mr. Williams of Mississippi and Mr. Grosvenor rose.

The SPEAKER. Does the gentleman yield?

Mr. PAYNE. I yield to the gentleman from Ohio.

Mr. GROSVENOR. Mr. Speaker, it would seem to me that the Committee on the Judiciary could come back and report that these papers do not contain any charge.

Mr. PAYNE. Yes; they could do that.

Mr. GROSVENOR. And in that case I take it the gentleman from Florida [Mr. Lamar] will at once put his indictment into proper form, and then there would be no question about the House taking proper action; but while these papers stand in the form they are my contention is that there is not any charge here against anybody.

Mr. WILLIAMS of Mississippi. Mr. Speaker——

Mr. FULLER. Mr. Speaker——

Mr. DALZELL. Let me ask the gentleman——

The SPEAKER. One moment.

Mr. PAYNE. I yield to the gentleman from Pennsylvania [Mr. Dalzell].

The SPEAKER. The gentleman from New York yields to the gentleman from Pennsylvania.

Mr. DALZELL. Suppose the resolution is adopted by the House. Does it amount to anything more or less than an opportunity for the Judiciary Committee to go on an exploring expedition?

Mr. GROSVENOR. That is all there is of it——

Mr. DALZELL. To find out whether or not this man can be impeached.

Mr. GROSVENOR. That is all there is of it. There is just enough in this to be properly denominated a scandalizing set of insinuations, and the committee is to hunt around and see if it can find something on which it ought to proceed further. That is all there is of this.

Mr. LAMAR of Florida. Mr. Speaker——

Mr. LACEY. Mr. Speaker, I withdrew the motion temporarily at the request of the gentleman from New York [Mr. Payne]. I now renew it.

The SPEAKER. The gentleman from Iowa moves that this resolution be referred to the Committee on the Judiciary.

Mr. WILLIAMS of Mississippi. Now, Mr. Speaker——

The SPEAKER. The gentleman from Mississippi.

Mr. WILLIAMS of Mississippi. A gentleman, a Representative upon this floor, has impeached a civil officer, from his place upon this floor, making at the time a certain statement——

Mr. GROSVENOR. Mr. Speaker, I rise to a question of order.

The SPEAKER. The gentleman will state it.

Mr. GROSVENOR. Has the motion to commit this proposition to the Committee on the Judiciary been withdrawn?

The SPEAKER. It has not.

Mr. GROSVENOR. Then I make the point of order that that motion is not debatable.

The SPEAKER. The Chair thinks the motion of the gentleman from Iowa [Mr. Lacey] is debatable, as to the propriety of the proposed reference, and has recognized the gentleman from Mississippi [Mr. Williams], who will confine himself within the limits.

Mr. WILLIAMS of Mississippi. Mr. Speaker, this is a matter of the highest privilege. A gentleman rises here in his place upon this floor and makes charges. It is a mistake to say that these charges are not distinct and specific. One of the charges, at any rate, is the specific charge of constant and persistent absenteeism and neglect of official duty. That by itself would be sufficient, if there were nothing else. The express language of the United States statutes makes living outside of the judicial district a "high crime and misdemeanor," and therefore an impeachable offense in the very language of the Constitution.

Mr. HEMENWAY. Mr. Speaker, will the gentleman yield for a question?

Mr. WILLIAMS of Mississippi. Yes.

Mr. HEMENWAY. There is no time fixed when the judge was absent from his State, is there—no date?

SEVERAL MEMBERS. Ten years.

Mr. HEMENWAY. I want to suggest this to the gentleman from Mississippi, who is a lawyer: If this statement were filed in the court of a justice of the peace in the form of an affidavit, and a motion was made to quash because no specific charge had been made, would not a justice of the peace or any other court have to sustain the motion?

Mr. WILLIAMS of Mississippi. Mr. Speaker, we are not trying the case before a justice of the peace.

Mr. HEMENWAY. I am submitting that question to the gentleman. Does not the charge lack that which is necessary in any court in order to constitute a basis for the beginning of proceedings?

Mr. WILLIAMS of Mississippi. These are not the articles of impeachment. When we come to the articles of impeachment which go up to the Senate, then what the gentleman has said would be pertinent. This is a motion to impeach; that is to say, it is a motion to take testimony for the purpose of determining whether in the opinion of the Judiciary Committee an impeachment ought to follow——

Mr. HEMENWAY. Mr. Speaker, will the gentleman permit me a minute?

The SPEAKER. Does the gentleman further yield?

Mr. WILLIAMS of Mississippi (continuing). And to present articles of impeachment, if it is found right and proper to do so. Now I will yield to the gentleman.

Mr. HEMENWAY. Now, I want to ask the gentleman, in view of the fact that the reputation of a judge of the United States circuit court is at stake, why is it not right and proper that some specific charge be made, or that the resolution go to the Committee on the Judiciary, so that they may investigate; and if charges can be made, to report this resolution back with an amendment making the proper charges?

Mr. WILLIAMS of Mississippi. That is just exactly what the gentleman from Florida [Mr. Lamar] is proposing to do.



Mr. HEMENWAY. Oh, no.

Mr. WILLIAMS of Mississippi. And he has been just as specific as he is compelled to be.

Mr. HEMENWAY. Oh, no; he wants the House to adopt the resolution now; while the motion of the gentleman from Iowa [Mr. Lacey] is to send it to the Committee on the Judiciary to report it back.

Mr. WILLIAMS of Mississippi. But the resolution which he asks the House to adopt now is a resolution to refer this matter to the Judiciary Committee, with power to send for papers and persons, and if justified to impeach.

Mr. HEMENWAY. Then everybody agrees that the resolution ought to go to the Committee on the Judiciary, and not to be adopted by the House.

Mr. WILLIAMS of Mississippi. That is what this resolution is. The gentleman from Florida [Mr. Lamar] makes the charge of "high crimes and misdemeanors," and specifies wherein the judge has been guilty of "high crimes and misdemeanors." Now, when articles of impeachment are formally brought out, then the argument which the gentleman has made in analogy to an indictment would lie; but this is not the case now. This is a motion to have the Judiciary Committee see if "high crimes and misdemeanors" have been committed justifying articles of impeachment, and formulate the charges in case they find that to be the case. Now, that is all there is in the gentleman's resolution, and there is no reason why the verbal motion made by the gentleman from Iowa [Mr. Lacey] should take the place of the written one, which is substantially the same thing, except that it is more in detail and has a practical purpose, to wit, impeachment, at the end.

Mr. FULLER. Mr. Speaker, I understand the question here is to refer the resolution to the Committee on the Judiciary. I think it ought not to be referred. I think it ought to be voted down in this House. This is a charge against a judge of the United States court of high crimes and misdemeanors and of corruption in office, without a single specification. The humblest citizen of this Republic can not be put upon trial without the charges are specified so that he knows what he has to meet.

If this resolution as drawn were adopted, this judge would be compelled to go before the Committee on the Judiciary and defend himself against charges of high crimes and misdemeanors and corruption in office. I contend that no such charge as that can be made against a judicial officer without a single specification to show him why he is to be impeached.

It is useless to refer such a resolution to the Committee on the Judiciary. They could do nothing but report it back with the statement that there was nothing before them upon which they could put this man upon trial. It is not their duty to sit as a grand jury, to send out for witnesses and papers, to see if somewhere, in some place, they could find somebody to specify charges against him. Before this man is put upon trial either before this House or before a committee of this House we should insist that somebody rise in his place and present charges that will notify him what he has to meet. If he has been guilty of high crimes and misdemeanors, if he has been guilty of corruption in office, then it ought to be easy for somebody from the State of Florida to get up in this House and present those

charges and specifications upon which the committee could act and report to this House. I insist, sir, that the resolution in its present form should be voted down by the House.

Mr. LAMAR of Florida. Mr. Speaker, I will restate the question, and unless I am so unfortunate as to be so obscure that the last gentleman—I believe from the State of Illinois—is utterly unable to understand me altogether, then, I think, Mr. Speaker, that if he does not retract his remark or objection he will at least interpose no further. The gentleman from Ohio [Mr. Grosvenor] characterizes the resolution sending this matter to the Committee on the Judiciary as one which invites that committee to go upon a “smelling investigation.” It would be just as fair for me to characterize the remarks of the gentleman from Ohio as a disposition to embarrass before this House the investigation of the charges made here by a Member based upon the solemn arraignment of the legislative department of the State of Florida. One would be as applicable as the other.

Now, Mr. Speaker, it is useless to argue with any Member of this House who feels that the accusation of high crimes and misdemeanors is not a sufficient enumeration of those offenses subjecting an officer to impeachment, based upon the serious arraignment by the legislative department of the State. I say it would be useless to argue the question, too, with a gentleman who does not take that to be a sufficient arraignment before this House, made in conformity with past proceedings upon a motion to impeach. Further debate and further argument to a Member who does not understand that would be useless.

But I address myself to the Members on the other side of the House, from which objections seem to come, and say to them that we have one other Federal judge in the State of Florida. No charge has ever been made against him. He is entirely satisfactory to the people of Florida—my district, as well as the other. Upon every question of general judicial, political, and social life Judge Locke is held as the peer of any man in my State, but against Judge Swayne there is serious objection. It is formulated here in the serious arraignment of him by the legislative department of the Government, and in my place I charge him with the high crimes and misdemeanors enumerated. This whole matter is sought to be referred to the Committee on the Judiciary of this House, with enabling powers to inquire into those charges.

The gentleman says it is not a grand jury inquiry. Why, it partakes of the very nature of a grand jury investigation *ex parte*, but is even more. All the questions of guilt or innocence will be called out by the committee. They can take testimony here or elsewhere, send for persons and papers, and administer oaths, all conducted in a solemn and formal way, and then upon the testimony report whether this House will go further in the impeachment of this judge or not.

Mr. WILLIAMS of Mississippi. If the gentleman will permit an interruption?

Mr. LAMAR of Florida. I will.

Mr. WILLIAMS of Mississippi. I just want to say on the question as to whether this proposition is a resolution of inquiry or impeachment that it pursues the exact manner in which impeachment was prepared in the House of Representatives when Judge Chase was

impeached away back in the early history of the country, in 1804, under Jefferson's first administration. I will ask the gentleman from Florida to read to the House the resolution that is found here.

Mr. LAMAR of Florida. Will the gentleman from Mississippi read it?

Mr. WILLIAMS of Mississippi. It was the resolution presented by John Randolph.

*Resolved*, That a committee be appointed to inquire into the official conduct of Samuel Chase, one of the associate justices of the Supreme Court of the United States, and to report their opinion whether the said Samuel Chase has so acted in his judicial capacity as to require the interposition of the constitutional power of this House.

That is, the constitutional power of impeachment. A short debate arose on this motion. Several Members supported a motion postponing it, and the House on the next day resumed the consideration of the resolution and passed it.

Now, that was the question, and when it went to the committee the committee formulated the charges in the shape of articles of impeachment. We do not try the case; the Senate tries it, of course, on the articles that are drawn up on information. The motion of the gentleman from Florida is in exact keeping with the precedents.

Mr. MANN. If the gentleman from Mississippi will allow me, what were the charges in that case?

Mr. WILLIAMS of Mississippi. No charges except an inquiry into the man's official conduct, whether it was such as to demand the interposition of the constitutional power by this House.

Mr. MANN. Does the gentleman say that the resolution was adopted by the House without any charge being made against the judge?

Mr. WILLIAMS of Mississippi. The inquiry into his official conduct was adopted by the House—no further charges than that—and Randolph's assertion that he was satisfied that Chase had been guilty of misconduct deserving impeachment.

Mr. MANN. Was any charge made preliminary to the adoption of the resolution?

Mr. WILLIAMS of Mississippi. There was a charge made by a Member in Congress, just as it has been made here by the gentleman from Florida. To explain, Mr. Randolph, in speaking to the House, goes on and says:

At the last session of Congress a gentleman from Pennsylvania did, in his place (on a bill to amend the judicial system of the United States), state certain facts in relation to the official conduct of an eminent judicial character, which I then thought and still think the House bound to notice. But the lateness of the session (for we had, if I mistake not, scarce a fortnight remaining) precluding all possibility of bringing the subject to any efficient result, I did not then think proper to take any steps in the business. Finding my attention, however, thus drawn to a consideration of the character of the officer in question, I made it my business, considering it my duty, as well to myself as those whom I represent, to investigate the charges then made and the official character of the judge in general. The result having convinced me that there exists ground of impeachment against this officer, I demand an inquiry into his conduct, and therefore submit to the House the following resolution:

*Resolved*, That a committee be appointed to inquire into the official conduct of Samuel Chase, one of the associate justices of the Supreme Court of the United States, and to report their opinion whether the said Samuel Chase hath so acted in his judicial capacity as to require the interposition of the constitutional power of this House."

Mr. MANN. Does the gentleman from Mississippi say that there was a resolution adopted for a committee of inquiry, without any specific charges made at the time?

Mr. WILLIAMS of Mississippi. Yes.

Mr. MANN. And it also appears that facts had been stated to a prior House.

Mr. WILLIAMS of Mississippi. Some facts in debate upon a motion to amend a judiciary bill.

Mr. MANN. That is true, only facts in debate, but in this case there are no facts at all.

Mr. WILLIAMS of Mississippi. Mr. Randolph merely gave that as leading up to why he had formed the opinion that the man ought to be impeached. Now, this is a resolution of the legislature of Florida, and the gentleman from Florida adopts the legislature's resolution as his own language as a reason why the conduct of this man ought to be inquired into to determine whether there is ground for the interposition of the constitutional right of impeachment. The cases are exactly similar.

Mr. MANN. Will the gentleman yield for another question?

Mr. WILLIAMS of Mississippi (continuing). The gentleman rises in his place and makes the charges, much more specific than was made by Mr. Randolph, or anybody else, in the impeachment of Mr. Chase.

Mr. MANN. We do not know what specific charges were made prior to that time.

Mr. WILLIAMS of Mississippi. There were none made at all with the view of impeachment; the other man was simply debating a motion to amend a judiciary bill, and he made certain remarks about Judge Chase. I do not know what those remarks were; I can not refer to them now; but that was not a part of the immediate proceedings at all. Then, as Mr. Randolph said, that led him to investigate, and he therefore came to the conclusion that there was ground for impeachment, and moved a general resolution to have inquiry made by the committee appointed for that purpose to determine whether or not an impeachment ought to be ordered, and upon that the House ordered it.

Mr. LAMAR of Florida. I have the floor, I believe, Mr. Speaker?

The SPEAKER. The gentleman from Florida has the floor.

Mr. LAMAR of Florida. Now, Mr. Speaker, I desire to ask a question of the objectors on the other side of the House. Let us understand each other and come directly to the heart of the matter. What is the force of the objection made on the other side to the adoption by the House of this resolution? What is the difference between the two methods of proceeding? The resolution which I offer is a better form of procedure than that proposed by Members on the other side. What is the difference? The resolution I offer, if adopted by the House, simply commits the whole matter to the Judiciary Committee of the House, so that, after hearing the testimony, they may, under the enabling power of this resolution (if they see fit), report back to this House their conclusion; and if they recommend impeachment, then this House can proceed in a formal way to appoint the managers of the impeachment, and the usual course of procedure at the other end of the Capitol will be pursued.

But what would happen if these objections should prevail and the whole matter should simply be referred to the committee? The committee, with less enabling power than this resolution proposes to give them, would report the matter back to the House, and probably ask for further power. And I will say to gentlemen who think that no facts will come out that within the control of the Committee on the

Judiciary—in their room—they have written accusations, piled Pelion on Ossa. The committee has affidavits and every other formal presentation of the charges in writing. The committee to whom this resolution will go, if the House should adopt it, have before them those documents charging Judge Swayne specifically and in detail with every species of crime. And do the gentlemen on the other side rise and object to giving to a committee of this House full power merely to inquire, and if upon inquiry they come to the conclusion that this judge should be impeached, to report such conclusion to the House? That is what the objectors on the other side are really objecting to.

Let us understand this matter, Mr. Speaker.

Mr. FITZGERALD. Will the gentleman yield for a question?

Mr. LAMAR of Florida. Yes, sir.

Mr. FITZGERALD. Do you not charge specifically that this judge has been for 10 years a nonresident of his district in violation of the statute?

Mr. LAMAR of Florida. I have so charged in specific language, based upon his persistent absenteeism.

Mr. FITZGERALD. Is not that sufficient specification upon which to base a resolution of this kind?

Mr. MANN. Is that a ground of impeachment? Is that a high crime or misdemeanor?

Mr. FITZGERALD. It is sufficient to authorize the House to direct an investigation.

Mr. MANN. My question is whether that is ground for impeachment?

Mr. FITZGERALD. Yes; the law requires this judge to reside in his district.

Mr. MANN. Then this resolution is to be sent to the committee to determine whether that is ground for impeachment or not?

Mr. FITZGERALD. No; to ascertain whether you can avoid an investigation. [Laughter on the Democratic side.]

Mr. LAMAR of Florida. I believe I have the floor, Mr. Speaker. Now, sir, the very inquiry of the gentleman on the other side discloses in one breath how completely the object and purpose of this resolution and the character of it are misunderstood by some Members objecting to it.

Mr. MANN. Will the gentleman permit a question?

Mr. LAMAR of Florida. Yes, sir.

Mr. MANN. Does the gentleman think that if this resolution should be adopted the Committee on the Judiciary ought to proceed with this inquiry without any specification putting the accused upon notice?

Mr. LAMAR of Florida. I have just stated that already in the possession of the chairman and members of this committee—within their own room—there are accusations of specific facts in every formal shape.

Mr. MANN. I was well aware that the gentleman had so stated just now. But does he think that the Judiciary Committee, if this resolution were adopted, should proceed to make an inquiry without any specification to put the accused upon notice?

Mr. LAMAR of Florida. They have full power to hear allegations or affidavits—every form of proof. Certainly the allegations or charges already presented are specifications themselves.



Mr. MANN. Oh no——

Mr. LAMAR of Florida. I decline to yield further at this time, as I desire to finish my remarks.

The inquiry of the gentleman from Illinois fitly characterizes a portion, at least, of the objection coming from the other side of the House. When a gentleman rises and asks whether persistent absenteeism, charged in a formal resolution of the legislature, if proven, is a sufficient ground for impeachment, he certainly ranks himself as another one of those objectors with whom it is scarcely necessary to argue. [Laughter on the Democratic side.]

Now, sir, the whole object of the resolution is to submit a direct accusation of wrongdoing or crime against a Federal judge in my State, made by me here upon my own responsibility, based and founded upon a solemn and severe arraignment of that judge by the legislative department of a State. It is stronger than the ordinary petition and memorial, which comes here by private hands, and can go into the possession of the Judiciary Committee and upon which that committee can act.

This is an indictment and arraignment by a Member upon his own responsibility, founded upon an accusation by the highest legislative authority in one of the States, and I say that it looks almost as if some of our friends on the other side did not understand the purpose of this resolution or at best desired to interpose technical objections. The whole scope of it merely goes to the point of submitting it to the committee. Suppose the committee hears it and determines that the charges are not well founded. They will so report to this House. Suppose this committee hears all of these allegations and charges, and takes every character of oral and written testimony that comes before it, and determines that this man has been corrupt and should be impeached. They will so report to this House. Then when that report comes before this House it is subject to the direction and control of this House and can be adopted or rejected as this House sees fit. That is the whole scope and tenor of the motion upon my part.

Now, Mr. Speaker, I yield five minutes of my time, if I have that much, and if not so much then as much as I may have, to the gentleman from Alabama [Mr. Clayton], reserving the balance of my time, if any.

Mr. CLAYTON. Mr. Speaker, the course pursued by the gentleman from Florida [Mr. Lamar] in this case is very similar to the course pursued in like cases heretofore in this body. The gentleman from Mississippi [Mr. Williams] has referred to one. Others are cited in Jefferson's Manual and Digest, and there are quite a number of others which can be found by reference to the bound volumes of the reports of the Committee on the Judiciary in the room of that committee at this time. The proceeding is not unusual.

Mr. MIERS of Indiana. Mr. Speaker, will the gentleman permit a question?

The SPEAKER. Will the gentleman yield to the gentleman from Indiana?

Mr. CLAYTON. Certainly.

Mr. MIERS of Indiana. Does the gentleman hold that the specific charge must be made by a Member, or that it is the duty of the Judiciary Committee to find a specific charge?

Mr. CLAYTON. There never was an impeachment proceeding inaugurated in this House based upon charges made with the degree of particularity required in an indictment, but when the House comes to formulate the charges for presentation, to which the accused must plead at the bar of the Senate, then particular specification is required. [Applause on the Democratic side.] But this is merely the inauguration of machinery for preferment of charges.

Mr. MIERS of Indiana. May I ask the gentleman another question?

Mr. CLAYTON. Certainly.

Mr. MIERS of Indiana. In view of the intimation of the gentleman from Florida [Mr. Lamar] and the tone of the argument of the gentleman from Alabama [Mr. Clayton], that the majority side will hide behind a technicality and not act upon the charges, does the gentleman not think it would be much better for the gentleman from Florida to make specific charges which could not be avoided?

Mr. CLAYTON. I think not. Such a thing would be unusual, and it would weary and exhaust the patience of this House were the gentleman from Florida [Mr. Lamar] to undertake here and now to recapitulate the high crimes and misdemeanors of which the people of Florida charge Charles Swayne. [Applause on the Democratic side.] There are in the possession of the Committee on the Judiciary a number of affidavits containing the utmost specifications. I am told that there went to the Speaker of this House papers on this subject, and this resolution merely undertakes to give the Committee on the Judiciary jurisdiction of this case and power to act.

Now, the difference between the motion of the gentleman from Florida [Mr. Lamar] and the motion of the gentleman from Iowa [Mr. Lacey] is this: If the motion of the gentleman from Iowa is adopted, these papers will all go to the Judiciary Committee, but the Judiciary Committee have only the ordinary powers which it exercises every day in the hearing of a bill or simple resolution. If, however, the resolution of the gentleman from Florida is adopted, this whole matter goes to the Judiciary Committee with power to investigate, to send for persons and papers, to employ a stenographer, and to conduct a complete examination.

Mr. Speaker, it is in line with the action of this House, given by unanimous consent, for I find in the Congressional Record the following, which I would like to have read to the gentleman from Illinois [Mr. Fuller], who never heard of such a proceeding as this. I also commend the gentleman to read a little more law, to go back to the hornbooks and study something about impeachments, for there he will learn that an impeachment is inaugurated by the House just as a grand jury inaugurates a criminal prosecution by indictment. A grand jury must have the power to summon witnesses, to pay those witnesses, to employ other means, including an officer to draw the indictment—all of those things; so the House of Representatives is merely asked in this case to authorize a subcommittee of the Committee on the Judiciary to sit and conduct an examination analogous to the examination held by a grand jury.

Now, you will find in the record of the proceedings of the Fifty-third Congress, volume 23, part 1, page 689, that a resolution similar to this one was adopted. The resolution is the thing to which I call particular attention. I omit the preamble.



The Clerk read as follows:

*Be it resolved*, That the said report, charges, and evidence be referred to the Committee on the Judiciary, with instructions to thoroughly investigate the same, and to report to the House the findings and recommendations in regard thereto at any time.

And for the purpose of making the investigation hereby ordered the said Committee on the Judiciary may adopt and use as legal evidence the testimony taken as aforesaid during the Fifty-first Congress in the case of Judge Boorman, and may take and consider any additional or explanatory evidence of a legal character which may be offered either for or against the said judge; and in respect to this investigation the said committee is hereby authorized and empowered to send for persons and papers, administer oaths, take testimony, and to employ a clerk and stenographer if necessary; to send a subcommittee whenever and wherever deemed necessary to take testimony for the use of said committee; and the said subcommittee, while so employed, shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary; that the Sergeant at Arms, by himself or deputy, shall serve the process of said committee and subcommittee and execute its orders, and shall attend the sittings of the same as ordered and directed thereby; and that the expense of such investigation shall be paid out of the contingent fund of the House.

Mr. CLAYTON. Mr. Speaker, now it is necessary that this House adopt some sort of a resolution in order to give the Committee on the Judiciary jurisdiction of this matter. The gentleman from Florida [Mr. Lamar] has gone through the precedents in like cases, and this seems to be the proper way. I desire to emphasize the fact that the only difference between his resolution and the motion of the gentleman from Iowa [Mr. Lacey] is that if the motion of the gentleman from Iowa should prevail the committee would be powerless to do anything except to consider just such papers as it may have, whereas under this resolution the Judiciary Committee can conduct a full and complete investigation, and either charge Judge Swayne or exonerate him. We owe this much to the people of Florida and to Judge Swayne.

Some gentlemen seem to misapprehend the purpose of this resolution. The resolution does not conflict with any law, parliamentary or other sort. It is entirely competent and proper for the House to refer this resolution to the Committee on the Judiciary and at the same time give that committee power to deal fully with the subject matter sent to them for inquiry and report. That's all there is in this case.

Mr. SMITH of Kentucky. I should like to submit a question to the gentleman.

The SPEAKER. The time of the gentleman has expired. The gentleman from Florida.

Mr. LAMAR of Florida. Mr. Speaker, I rise to renew my motion. I can not understand, and I do not believe it will happen, that any considerable objection will be offered by the other side to the adoption of this resolution, because the very effect of this resolution is to put it into the power of Judge Swayne or his friends or his defenders to come before that committee in his defense. The appointment of this committee is public notice to the world. It will be known in Florida and everywhere at once. It will be within Judge Swayne's power, by himself in person or by attorney or by personal friends, to appear before this committee and repel these charges. Now, in view of the high character of this committee it is understood and assumed that if Judge Swayne can repel these charges fairly—so fairly that it raises a presumption of his innocence—this committee will report against a formal impeachment.

Mr. BARTLETT. Mr. Speaker, may I just for a moment interrupt the gentleman? Is it not specifically charged in this memorial that this judge has for 10 years continually resided out of his district?

Mr. LAMAR of Florida. I will read just a line or two from what the gentleman has before him, if he will allow me, for the benefit of my friend from Illinois.

Mr. BARTLETT. I wanted to call your attention to that.

Mr. LAMAR of Florida. I want to read from the statute where the law makes it the duty of a district judge to reside in his district. The reason for that, of course, is to give him locality, and to give litigants a chance to appear before him without incurring undue and unnecessary expense. The object is to make him, for his salary, stay there at the convenience of the people. But it is not only a high misdemeanor under the law not to reside in that district, but by construction and implication of law it is an offense against the law to unduly absent himself from that district. Any amount of absenteeism that goes——

Mr. Boutell rose.

Mr. LAMAR of Florida. If the honorable gentleman will allow me to finish——

The SPEAKER. The gentleman declines to yield.

Mr. LAMAR of Florida. If this judge goes out of his district and absents himself, and remains where litigants can not reach him, where the people who, in part at least, pay his salary can not appear before him; if he takes himself out of that district unduly, for private business or personal pleasure, that is an offense against the law.

Mr. WILLIAMS of Mississippi. Under the statute.

Mr. LAMAR of Florida. And he commits a high misdemeanor even if he technically resides in the district, but unduly absents himself from it. And yet the gentleman from Illinois [Mr. Mann] asked if that was a ground for impeachment.

Mr. MANN. Will the gentleman pardon a question? I fully agree with the gentleman that it ought to be a ground for impeachment, but has the gentleman found any case in which a judge was impeached for being guilty——

Mr. LAMAR of Florida. I will read you the law.

Mr. MANN. Oh, I know what the law is. The question is whether it is a high crime or misdemeanor.

Mr. WILLIAMS of Mississippi. The statute says so.

Mr. SPIGHT. It says so in express words.

Mr. LAMAR of Florida. I will merely refer to the act of Congress which prescribes that this judge shall reside in his district.

Mr. PAYNE. If the gentleman from Florida will allow me I will state that the statute makes that a high crime and misdemeanor.

Mr. WILLIAMS of Mississippi. Yes, it does.

Mr. PAYNE. I would like to ask the gentleman a question.

Mr. LAMAR of Florida. I would like to continue my remarks and then yield.

Mr. PAYNE. Will the gentleman yield to me for a question?

Mr. LAMAR of Florida. Yes, sir.

Mr. PAYNE. Is the gentleman satisfied to have the Judiciary Committee simply investigate this one charge of absence from the State, or are there other charges he wishes to have investigated?

Mr. LAMAR of Florida. I will say to the gentleman, if you desire to effect a result and had four good grounds to base it upon, would you abandon three and submit the question on one?

Mr. PAYNE. I understand that the gentleman wants to refer it to the Committee on the Judiciary.

Mr. LAMAR of Florida. I answer the gentleman's question by asking him another.

Mr. PAYNE. I ask the gentleman this further question: Why not have his resolution referred to the Committee on the Judiciary and have them ascertain if any further charges are to be made; whether the charges are made on the responsibility of somebody, the gentleman himself, a Member of this House—other charges than this one specific charge which is made in his indictment, the specific charge of absence from the State and from the judicial district? I ask the gentleman if he is not content to have it go to that committee and make his other specific charges and let them amend the resolution and bring it in with the other specific charges to be adopted by the House; to refer it then to the Judiciary Committee on all these specific charges, to take evidence and bring in, if they see fit, articles of impeachment?

Mr. LAMAR of Florida. I will say in answer to the gentleman that before I submitted this resolution I carefully considered it, and having done so, and having adopted the grounds upon which I intend to proceed, I have not the slightest idea of abandoning them; and the only way that the gentleman from New York and others who feel like him will get rid of the resolution will be to vote it down. [Applause on the Democratic side.] I do not believe that any considerable number of gentlemen on that side will vote that way. I do not believe that any considerable number of fair-minded men in any legislative body, much less in a body of such high character as this, would upon technicalities defeat the object of this resolution, if I may be permitted to put it that way, and prevent its consideration by any mere technical objection.

It should be referred to a committee with full power to inquire. That is the purpose of the resolution. That brings out all the facts, and they can determine on the guilt or innocence, so far as their recommendation for further action goes. I think, Mr. Speaker, that it is fully obvious to Members upon both sides of this House what this resolution means, and now, having finished my remarks, I feel that it would be trespassing upon the patience and upon the intelligence of this House to argue further, so I renew my motion, and ask the previous question upon it.

The SPEAKER. The gentleman from Florida demands the previous question.

Mr. LACEY. I would ask the gentleman if he will insist on the motion for the previous question without giving the mover of the resolution, which has been debated, an opportunity to debate the question? I made the motion modifying the resolution, but have had no opportunity to argue it. I ask the gentleman to withdraw his motion.

Mr. LAMAR of Florida. I withdraw my motion for the present.

The SPEAKER. The Chair will state to the gentleman from Florida—

Mr. LACEY. I am entitled to take the floor in my own right as the mover of the proposition to modify, and the gentleman was recog-

nized first on the other side and had his time and now proposes to cut off without debate the explanation of the motion to refer.

The **SPEAKER**. The Chair will state that the motion of the gentleman from Florida for the previous question is in order and will cover both the motion of the gentleman from Florida and the motion of the gentleman from Iowa.

Mr. **LAMAR** of Florida. Mr. Speaker, I withdrew my motion for the previous question.

Mr. **LACEY**. Now, Mr. Speaker, I ask to be recognized. I will not occupy very much time. Here are very grave charges, made in a somewhat loose form by the legislature of a sovereign State. These are worthy of consideration; they should not be ignored; they should be sent to a responsible committee, a committee having all the power and right to look into questions of this kind. Now, it is not at all unusual to send resolutions just such as this to a committee, in order that the phraseology of the resolution on which action is to be taken might not be vague and unsatisfactory. The committee will put it in form.

Here is the preliminary proceeding in one of the most important prerogatives of the House of Representatives, taking the first step toward the impeachment of a man holding an office under the Constitution of the United States. It is therefore important in the first step that the resolution should be in proper form. The motion made by me does not dispose of the resolution. It simply refers it to a committee representing both sides of the Chamber, to put in proper shape for adopting it or not, it being first considered by the Committee on the Judiciary.

That is all the difference that there is between the proposition of the gentleman from Florida and my own. One is for adopting the resolution without further consideration, and the other is to have the committee examine the preliminary facts and phraseology of the resolution before the House is called upon to act upon it. It may be that the powers given to the committee by the resolution introduced by the gentleman from Florida are not ample. They may want further power, and it is for them to say whether they want to go to Florida or not. Let them hear these preliminary charges, let them investigate or report it back, which they will undoubtedly do. This is a very grave matter. There is no disposition on the part of anybody to slur it over or bury it or dispose of it otherwise than on its merits, but the first step is to ascertain if it has merit and what the merits are, and if the motion which I have offered is adopted, the Committee on the Judiciary will make a preliminary examination.

Mr. **Burkett** rose.

Mr. **LACEY**. I will yield to the gentleman from Nebraska for a question.

Mr. **BURKETT**. What would be the difference in the report on the motion offered by the gentleman from Iowa [Mr. Lacey] and the report on the resolution of the gentleman from Florida [Mr. Lamar]?

Mr. **LACEY**. There is nothing for the committee to report on if the resolution is adopted. If the resolution is adopted, it is the action of the House, but if my motion is adopted the resolution goes to the committee and comes back with or without committee amendments for adoption or rejection by the House.

Mr. WILLIAMS of Mississippi. If the gentleman from Iowa will pardon me, this difference exists: Under the motion of the gentleman from Florida that committee is now empowered to hear testimony, to go to Florida, if necessary and it thinks proper, and to summon witnesses, while if the motion of the gentleman from Iowa is adopted it will be powerless to do those things.

Mr. LACEY. But the committee would report back the resolution with the recommendation that it have authority to go to Florida. This resolution is not disposed of, and they can report it back amended or verbatim in the form in which the gentleman from Florida has produced it. But to adopt it without first sending it to the committee would, in my opinion, be a mistake.

Mr. BURKETT. Mr. Speaker, I want to finish my question. If we adopt the resolution offered by the gentleman from Florida, do we not ask the Judiciary Committee to bring in a finding of "guilty" or "not guilty" when there are no specific charges, and have we a right to do that?

Mr. LACEY. We affirm that there is sufficient in the charges to justify them in taking testimony and investigating.

Mr. Speaker, only one specific charge is embraced in this resolution, and that is the charge of nonresidence. Now, if, on the other hand, the committee, after hearing the complaint——

Mr. Cooper of Wisconsin rose.

Mr. LACEY. I will yield to the gentleman in a moment. After hearing the statement that will be presented to that committee the committee can report the resolution back to the House with amendments recommending the enlarging of the scope and embracing other charges, if there are any. They may find that there is no sufficient justification. The House can then act intelligently upon the matter. We can not here, in the hurly-burly of general debate in this great body of nearly 400 Members, investigate a matter of this kind, but the seclusion of the committee room, with both sides of the Chamber represented by eminent lawyers, is the proper place to present the preliminary charges in order that the resolution, when it is adopted, can be in proper form. I will now yield to the gentleman from Wisconsin.

Mr. COOPER of Wisconsin. Mr. Speaker, I would like to ask the gentleman from Iowa if he is quite sure that these charges are not specific? They are indorsed, as I understand, by the gentleman from Florida, and one of the charges is this:

Whereas the administration of the United States bankruptcy act in the court of said Charles Swayne and by his appointed referee has resulted in every instance in the waste of the assets of the alleged bankrupt—

All you have to do is to take the record of any bankruptcy case in that court, because it says that in every instance there is a waste of assets of the alleged bankrupt—

by being absorbed in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is, in effect, legalized robbery and a stench in the nostrils of all good people.

Now, that is a specific charge of robbery under legalized forms in every bankrupt case in that court, and a squandering of the assets under the authority of the judge and of his referee.

Mr. LACEY. I want to remind the gentleman that I only yielded for a question.



Mr. COOPER of Wisconsin (continuing). It says that his judicial opinions do not command respect and confidence. There are certainly two specific charges, one of nonresidence and another——

Mr. LACEY. I would like to ask the gentleman from Wisconsin if he is satisfied with my answer to his question? [Laughter.]

Mr. COOPER of Wisconsin. Mr. Speaker——

The SPEAKER. Does the gentleman from Iowa [Mr. Lacey] yield further?

Mr. LACEY. I yielded for a question——

Mr. COOPER of Wisconsin. I want to read one other specification and then ask the gentlemen whether they do not constitute specifications on which to base a proceeding of impeachment?

Mr. LACEY. I will say in advance, to save my friend from reading further, that there are some specific statements there; but the charge made by the gentleman from Florida in his place on the floor is a charge of high crimes and misdemeanors, and without specifying what they are he states that he will abundantly support this general charge with matters of a more specific nature before the committee. Now, when he does that, the committee may bring in a resolution and report back this resolution with an amendment setting out the additional charges that the gentleman thus brings before the committee, so that when the House acts on this resolution it may act intelligently—act in the light of at least preliminary evidence which would justify further proceedings.

Mr. BURKETT. What will the committee do with this resolution under your motion?

Mr. LACEY. The committee will report it back for action—report that it be indefinitely postponed, or laid on the table, or adopted, or amended and then adopted, as the case may be. The Committee on the Judiciary would have the same power over this resolution that the Committee on Appropriations would have over a resolution sent to it.

Mr. BURKETT. The committee may take up these charges and put them in proper shape?

Mr. LACEY. Yes; lick them into shape, in other words. That is one of the purposes of sending a resolution to a committee—in order that details may be examined and the resolution put in due form for the action of the House. It is not usual to pass a resolution even of privilege without consideration by a committee.

Mr. WILLIAMS of Mississippi. Allow me one question: Under your resolution, if adopted, could this committee bring in articles of impeachment? The resolution of the gentleman from Florida embodies that proposition—that the committee bring in articles of impeachment if they find such a proceeding justified by the facts. Can that be done under the motion of the gentleman from Iowa? That is the practical thing we are trying to get at.

Mr. LACEY. The answer to the gentleman from Mississippi is very simple. If the committee think that there ought to be articles of impeachment they will bring in a substitute for the resolution of the gentleman from Florida—they will ask the House to adopt a resolution directing them to prepare articles of impeachment. They might not go any further than that. This resolution is subject to amendment. I do not understand why there is anything so special about it that we must insist upon adopting it without having an

opportunity to amend it either in the House or in the committee. The committee is the proper place to amend it.

I now yield five minutes to the gentleman from Pennsylvania [Mr. Olmsted].

Mr. OLMSTED. Mr. Speaker, I believe I am safe in saying that with possibly one exception no such resolution as this has ever been adopted by the House without reference to the Committee on the Judiciary; and for the simple reason that under the rules and precedents of the House it is not privileged and was not entitled to be entertained or discussed this morning except by unanimous consent. Under the rules it is not privileged to be considered until first reported from committee. If any gentleman wants authority for that position, he will find it in the decision of Speaker Carlisle, reported in section 148 of the book of Parliamentary Precedents prepared by Mr. Hinds, page 94. This is not a resolution of impeachment. It is simply an inquiry and not privileged at all. It does not impeach, but in its preamble sets forth general charges of corruption, and asks an investigation to ascertain if there is sufficient ground for impeachment.

Now, the case to which the gentleman from Alabama referred is in exact line with the action which the gentleman from Iowa [Mr. Lacey] proposes that the House shall take in this case. A resolution had been offered, and was referred by the House to the Committee on the Judiciary, which committee reported, and the House passed an amended resolution which the gentleman from Alabama read.

Now, the one possible exception is that referred to by the gentleman from Mississippi [Mr. Williams], where Mr. Randolph, of Virginia, rose and stated that he had within his possession facts which convinced him that Judge Chase had been guilty of misdemeanor in office. He preferred not to state the facts. Mr. Elliot said he would not vote for any such resolution unless facts were stated specifically, whereupon Mr. Smilie, of Pennsylvania, rose, as reported in the annals of the first session of the Eighth Congress, January 5, 1804, page 1808, and said:

A man of the name of Fries was prosecuted for treason in the State of Pennsylvania. Two of the first counsel at that bar, Mr. Lewis and Mr. Dallas, without fee or reward, undertook his defense. I mention their names to show that there could have been no party prejudices that influenced them. When the trial came on, the judge behaved in such a manner that Mr. Lewis declared that he would not so far degrade his profession as to plead under the circumstances imposed upon him. Mr. Dallas declared that the rights of the bar were as well established as those of the bench; that he considered the conduct of the judge as a violation of those rights, and refused to plead.

The facts were these: The judge told the jury and the counsel that the court had made up their minds on what constituted treason; that they had committed their opinion to writing, and that the counsel must, therefore, confine themselves to the facts in the case before the court. The counsel replied that they did not dispute the facts, but that they were able to show that they did not constitute treason. The end of the affair was that the counsel retired from court, and the man was tried without counsel, convicted, and sentenced to death.

After this the Attorney General wrote a letter to Messrs. Dallas and Lewis requesting them to furnish their notes and opinions for the use of the President. They drew up an answer, in which they stated that the acts charged against Fries did not amount to treason, but were only sedition; and that they were so considered in the British courts. This letter was read to me by Mr. Dallas. After receiving the letter the President pardoned the man.

Those were the facts stated in the case referred to by the gentleman from Mississippi [Mr. Williams]. The precise case in which the judge had misbehaved was stated and the facts as to his alleged misconduct



were given. Now, we have here the allegation of the gentleman from Florida [Mr. Lamar] that this judge has been guilty of corruption. If guilty he ought to be impeached; but the charges should be specifically set forth. No case is specified; no circumstances are given. The specific charges should be laid before the Judiciary Committee, which may then report this or such other resolution as it deems proper for action by the House. It need not take more than one day longer. I say that it has never been known in the history of this or any other body that such a resolution should first be passed without being referred to a committee, and I hope the motion of the gentleman from Iowa [Mr. Lacey] will be adopted.

Mr. CRUMPACKER. Mr. Speaker, I desire to ask the gentleman from Iowa a question.

The SPEAKER. Does the gentleman from Iowa yield to the gentleman from Indiana?

Mr. LACEY. I yield to the gentleman from Indiana for a question.

Mr. CRUMPACKER. This is a question of procedure, and it is one of considerable importance. I understand that if the motion of the gentleman from Florida shall be adopted it will be the expression of a desire on the part of the House that an investigation shall be had by the Committee on the Judiciary, and the pending resolution will be the basis of that investigation. The Committee on the Judiciary will be empowered to report articles of impeachment regularly if it concludes that the facts justify it.

Mr. LACEY. And that the limitations upon that investigation would also be embraced in the resolution.

Mr. CRUMPACKER. Now, if the motion of the gentleman from Iowa prevails, the responsibility will be shifted from the House to the Committee on the Judiciary. It is equivalent to a declaration that the House is not prepared to say that there ought to be an investigation at all, but that responsibility shall be with the Committee on the Judiciary, which can investigate or not, as it pleases. That is the fundamental difference in the procedure between the two motions, is it not?

Mr. LACEY. One is an orderly procedure before a committee with ample opportunities to investigate and to determine whether there ought to be such an inquiry instituted, with expenditures incurred. The other is an attempt to pass a resolution simply upon the ex parte statement of a gentleman upon the floor of the House, without testimony, without examination, aided, it is true, however, by resolutions, which he produces, from the Legislature of the State of Florida. What investigation that body made, of course, I do not know.

Mr. WILLIAMS of Mississippi. Mr. Speaker, it seems to me that this suggestion would come in there. If the resolution of the gentleman from Iowa [Mr. Lacey] is adopted, then the Judiciary Committee can not bring in articles of impeachment, because, except when it is authorized by the House to do so in the contingency of their being justified, it has no such power. Every impeachment case from the beginning of the history of the Government has originated with a reference to a standing committee or an appointed committee, with authority conferred to bring in articles of impeachment if found justified. This committee has no such power.

Mr. LACEY. I would ask the gentleman from Mississippi [Mr. Williams] if it is not true that this reference does not dispose of the reso-

lution so far as the House is concerned, but simply leaves it open for the House to act upon and to amend, if necessary, such action as may be suggested by the Committee on the Judiciary?

Mr. WILLIAMS of Mississippi. It disposes of it, yes; but it disposes of it by getting it out of the House, without any instructions or suggestions from the House, into the committee, without power upon the part of the committee to send for testimony or witnesses and without any power to impeach in case impeachment should be necessary. In other words, it will require future action of the House to authorize the committee to go further, even to hear testimony. There is no sense in sending it there unless that committee can send for papers and witnesses. It would be unjust to the man who is being charged—Judge Swayne—not to have that committee given power to send for witnesses in his behalf as well as against him. You will send the case there upon a mere ex parte statement against him without any power upon the part of the committee to have witnesses in his behalf paid for by the Government.

Mr. LACEY. Mr. Speaker, I will simply say in answer to the gentleman that if that committee desires any further power all it has to do is to ask for it when it reports the resolution back. It can report the resolution back without requesting the power referred to or with a request for further power, as the case may be. The House then being enlightened by the report of that committee, can adopt the report or refuse to adopt it, as the case may be.

Mr. Speaker, I now move the previous question on the motion to refer and the motion of the gentleman from Florida [Mr. Lamar].

Mr. BURKETT. Mr. Speaker, I rise to a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. BURKETT. Is a motion to postpone further consideration of this matter to a definite time now in order?

The SPEAKER. In reply to the parliamentary inquiry, the Chair will state that a motion to postpone to a definite time would not be in order pending the motion for the previous question. The gentleman from Iowa moves the previous question upon both resolutions.

The question was taken, and the previous question ordered.

The SPEAKER. The question now is, first, upon the motion of the gentleman from Iowa to refer the resolution to the Committee on the Judiciary.

Mr. BURKETT. Mr. Speaker, would a motion to postpone to a definite time be now in order?

The SPEAKER. Not while the previous question is being executed.

The question was taken on the motion of Mr. Lacey, and the Speaker announced that the noes seemed to have it.

Mr. Lacey demanded a division.

The House divided, and there were—ayes 53, noes 129.

The SPEAKER. The motion is disagreed to. The question now recurs on agreeing to the resolution.

The resolution was agreed to.

The announcement of the result was received with applause.

On motion of Mr. Lamar of Florida, a motion to reconsider the last vote was laid on the table.

HOUSE OF REPRESENTATIVES, *March 25, 1904.*

[Congressional Record, volume 38, part 4, page 3733.]

## REPORTS FROM COMMITTEES.

Mr. Palmer from the Committee on the Judiciary: House resolution (H. Res. 274) that Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached for high misdemeanor; to the House calendar.

Said resolution was embodied in the report of the committee (Rept. No. 1905), reading as follows:

[House Report No. 1905, part 1, Fifty-eighth Congress, second session.]

## REPORT.

## PART 1.

[To accompany H. Res. No. 274.]

On the 10th day of December, 1903, the House passed the following resolution:

[H. Res. 86.]

*Resolved*, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the official misconduct of Charles Swayne, judge of the United States district court for the northern district of Florida, and say whether said judge has held terms of his court as required by law; whether he has continuously and persistently absented himself from the said State, and whether his acts and omissions in his office of judge have been such as in any degree to deprive the people of that district of the benefits of the court therein to amount to a denial of justice, whether the said judge has been guilty of corrupt conduct in office, and whether his administration of his office has resulted in injury and wrong to litigants of his court.

"And in reference to this investigation the said committee is hereby authorized and empowered to send for persons and papers, administer oaths, take testimony, and to employ a clerk and stenographer, if necessary, to send a subcommittee whenever and wherever it may be necessary to take testimony for the use of said committee. And the said subcommittee while so employed shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall serve the processes of said committee and subcommittee and execute its orders, and shall attend the sittings of the same as ordered and directed thereby. And that the expense of such investigation shall be paid out of the contingent fund of the House."

Testimony was taken in Pensacola, Tallahassee, and Jacksonville, Fla., and in the city of Washington upon several days. At all the hearings the Hon. Charles Swayne was present himself and by counsel, except at the last hearings in Washington, when he appeared in propria persona and argued his case before the subcommittee. All the witnesses asked for by the complainants and the respondent were sworn. Their evidence was reduced to writing and is presented with this report.

Specifications of the particular matters covered by the general charges were furnished the committee by the complainants. They were as follows:

*Specification 1.*—That the said Charles Swayne, judge of the United States court in and for the northern district of Florida, for 10 years, while he has been such judge, was a nonresident of the State of Florida, and resided in the State of Delaware; that he never pretended to reside in Florida until May, 1903; that during said time of his nonresidence, by such nonresidence, he has caused great inconvenience, annoyance, injury, and expense to litigants in his court, not so much by failure to hold terms of court as by failing to be in reach for the disposition of admiralty and chancery matters and other matters arising between terms of court needing disposition.

*Specification 2.*—That said Charles Swayne, as such judge, appointed one B. C. Tunison as United States commissioner; that it was charged that it was an improper appointment, and that testimony was offered to such effect before said appointment.

*"Specification 3.*—That the said Charles Swayne, as such judge appointed and maintains one John Thomas Porter as United States commissioner at Marianna, but that said Porter does not reside at Marianna, but at Grand Ridge, 16 miles away, and is never at Marianna or at his office, except when notified of an arrest, necessitating people having business with the United States commissioner, often at expense and inconvenience, to go to Grand Ridge, and necessitating the holding of prisoners often for a day or two, at their inconvenience, and in imprisonment at the expense of the Government, until said Porter sees fit to come to Marianna.

"The said Swayne, although there is great necessity for a commissioner at Marianna, has refused to appoint such.

*"Specification 4.*—That said Swayne, in the administration of his court, has been guilty of great partiality and favoritism to one B. C. Tunison, mentioned in specification No. 2, and a practicing attorney in said court. That so great and well known has this partiality and favoritism become that it has created the general impression that to succeed in that court before the said Swayne it is necessary to retain the said Tunison.

*"Specification 5.*—That said Swayne has been guilty of oppression and tyranny in his office, incorrectly and oppressively and without just cause imprisoning one W. C. O'Neal, one E. T. Davis, and one Simeon Belding upon feigned, fictitious, and false charges of contempt of his said court.

*"Specification 6.*—That said Charles Swayne has willfully, negligently, and corruptly maladministered bankruptcy cases in his court, to the extent that the assets of bankrupts have, in all or nearly all cases, been squandered and dissipated in paying extraordinary fees and expenses, and never paying any dividends to creditors.

*"Specification 7.*—That said Charles Swayne was guilty of oppression and tyranny in his office to one Charles Hoskins, upon an alleged contempt resulting in the suicide of the said Hoskins, and said alleged contempt proceedings being brought for the purpose of breaking down and injuring one W. R. Hoskins, who was charged in said court with involuntary bankruptcy, but who was defending and resisting such charge.

*"Specification 8.*—That said Swayne corruptly purchased a house and lot in the city of Pensacola while the said house and lot was in litigation in his court.

*"Specification 9.*—Ignorance and incompetency to hold said position. Under this specification many illustrations could be given, among them a case in which he took jurisdiction in admiralty in violation of the treaty between the United States and Sweden and Norway; and in one case, that of Sweet v. Owl Commercial Co., in which he charged the jury to exactly and diametrically conflicting theories of law.

*"Specification 11.*—That said Swayne, by reason of his absence from the State, failed to hold the term of court which should have been held at Tallahassee in the fall of the year 1902, during the months of November or December.

*"Specification 12.*—That the said Charles Swayne has been guilty of conduct unbecoming an upright judge, in that he has procured as indorsers on his note, for the purpose of borrowing money, attorneys and litigants having cases pending in his court.

*"Specification 13.*—That the said Charles Swayne has been guilty of maladministration in the affairs of the conduct of his office; that he has discharged people convicted of crime in his court. Illustration, case of Alonzo Love, convicted in the year of 1902 of perjury."

#### FINDINGS OF FACT AND LAW.

The facts proved by the testimony bearing upon the several specifications are found to be as follows:

*First, as to the evidence of Judge Swayne's residence in his district.*—Judge Charles Swayne was appointed district judge of the United States for the northern district of Florida in 1890. At that time the boundaries of the district included St. Augustine, where he resided. In the year 1894 the boundaries of the district were changed by an act of Congress, and St. Augustine and Jacksonville were included in the southern district, leaving Pensacola and Tallahassee as the only places at which a United States court was held in the northern district.

From the time the boundaries of the northern district were changed until the year 1903 Judge Charles Swayne boarded at hotels or boarding houses in Pensacola and Tallahassee during the times his court was in session, except

portion of the year 1900, about two or three months, when he lived with his family in Pensacola, in a house rented by his wife. The testimony establishes the fact that substantially he was not in the district at any other time except when his court was in session. From 1896 to 1904 his court was open for business 492 days, being the average of 61½ days per annum for eight years. No testimony was offered to show how many days the court was open or closed during the years 1894 and 1895.

In the year 1903 his wife purchased a house in Pensacola. There is no evidence that he has occupied it, or that he has ever been registered, paid taxes, or voted in the northern district of Florida since the boundaries of the district were changed, or that his family has been there, except a part of one winter.

Upon the part of Judge Swayne, a witness testified that he had, at the request of Judge Swayne, endeavored at different times between 1894 and 1903 to find a suitable house in Pensacola which he could purchase, and at one time endeavored to get a house built for him, but that he had not succeeded in either effort.

Judge Swayne testified that when he first went to Pensacola he asked a man connected with a bank to have his name placed on the registry. It was not done. Judge Swayne admitted that he never was registered in the northern district of Florida, never paid a tax, voted, or in any manner exercised the rights of citizenship. After making the request of a person not connected with the registration of voters, he never inquired to find if it had been done. He stated to at least one person that his home was at Guyencourt, Del.; that was the place where he went when court was not in session in Florida, or when he was not holding court in other States.

From the testimony in the case your committee find that Judge Swayne has never acquired a legal residence in the northern district of Florida, nor has he actually resided there, within the meaning of the act of Congress, which is as follows:

"A district judge shall be appointed for each district, except in the cases hereinafter provided. Every such judge shall reside in the district for which he is appointed, and for offending against this provision shall be guilty of a high misdemeanor."

This act needs no interpretation. Its purpose is plain. A nonresident judge can not perform the duties of his office properly or rightfully administer justice to the people of his district. Whether he can or not, the law requires him to live there, and makes him guilty of a high misdemeanor if he does not obey it. There is sufficient evidence, if evidence were needed, to satisfy your committee that the continued absence of Judge Swayne subjected lawyers and suitors to inconvenience, delay, and expense, and in some cases amounted to a denial of justice. Let it be granted that there is not; let us suppose that no one suffered harm. We do not find that Judge Swayne is therefore to be excused from obeying the law. No exception is contained in the act; we can not write one in for his benefit.

Judge Swayne does not claim that he had a residence in his district from 1894 to 1903. His testimony is rather in the nature of a series of excuses for not having it. He says he authorized his clerk to look for a house in Pensacola; that he spoke to a bank cashier about being registered; that he was always ready to go back to his district when needed; that he was called to hold court elsewhere; that other southern judges go north in the summer season. All this does not excuse Judge Swayne for noncompliance with a highly penal statute. It ill becomes a judge to set up excuses for disobeying the law. After the Florida legislature had acted and passed the condemnatory resolution, upon which this proceeding is founded, he apparently awoke to the fact that his plain duty in respect to residing in the district had been neglected. His wife purchased a house in Pensacola. The evidence does not show that he ever even lived in that house. This statute is as binding upon Judge Swayne as any other law upon the statute book. If he may violate this act with impunity he ought to be allowed exemption from obedience to all laws.

It may be conceded that residence is ordinarily a question of intention. A man's legal residence is, doubtless, where, after having gained a residence, he intends to reside. But in order to comply with this statute we submit that there must be something more than an intention on the part of a judge to reside in his district. There must be an actual as well as a legal residence. One may establish and have a legal residence in the United States and remain continuously abroad any number of consecutive years without losing it; but such a constructive or legal residence certainly would not answer the purpose of this



statute which clearly was to secure the bodily presence of the judge within his district where the people who had need of his official services could have them.

"It has been said that the word residence is an elastic term of which an exhaustive definition can not be given, but that it must be construed in every case in accordance with the object and intent of the statute in which it occurs." (Eng. and Am. Enc. p. 696.)

"It may happen that one may have two places of residence, in one of which he resides during one portion of the year, in the other during the remaining portion. In such case the place where he happens to be constitutes his residence so long as he is there, and ceases to be such as soon as he leaves for the other place." (Ibid., 699. *Walcott v. Bolfield*, 1 Kay, 534; 18 Jurist, 570; *Stout v. Leonard*, 37 N. J. L., 492.)

In the case of *The People v. Owen* (29 Colo., 535) it was held that when a statute requires a district judge to reside in his district the residence contemplated was as actual as distinguished from a legal or constructive residence.

Judge Swayne offered himself as a witness upon this question after the committee came to Washington after visiting Florida. He was sworn, and his testimony was as follows:

"Mr. PALMER. Judge Swayne will proceed and will make his statement to the stenographer.

"JUDGE SWAYNE. I was born in 1842 in Delaware, and resided there with my parents. I read law in Philadelphia and was admitted to the bar and took my degree of B. A. in the Pennsylvania Law School. I practiced law there, with the exception of one year, until 1885, when I removed with my family to Sanford, Fla. I practiced law there until 1887, when I was burned out, when I removed with my family to the county seat, where I was residing when appointed to the bench on May 17, 1889. I took the oath of office June 1, 1889.

"Mr. PALMER. That was a recess appointment, was it not?

"JUDGE SWAYNE. Yes, sir; I can not tell positively what date I was confirmed. The confirmation came up before Congress the following December, and in consequence of the election trials, which had taken place in the meantime, the confirmation did not occur until April 1, 1890. I addressed the Senate on the subject, which can be seen by the Congressional Record of the first session of the Fifty-first Congress, volume 21, February 21, 1890, and which was a very interesting debate, showing exactly what the questions were. In the summer of 1890 I moved to St. Augustine. I think we arrived there the 1st of October, having been North on a vacation, as was the custom of most of the Federal judges, perhaps of all of them, to take such vacations. I resided in St. Augustine with my family, and, about the time when the bill making the change in the district which has been spoken of received President Cleveland's signature, after a consultation with my friends in Jacksonville and vicinity they urged me not to move my furniture nor my family, saying that the next Congress would be Republican and the district would be placed back in its usual form. My furniture was allowed to remain, and I went at once to Pensacola. I found a leading Democratic friend there, and I stated to him that I had concluded not to move my furniture there, and it was all well understood by the people there. I was there for a considerable period, sometimes early in October and sometimes a little later, and I was there all the time I was needed unless holding court somewhere else. By special assignment for five months I was in the court at Dallas. In 1890, in July, I went with my family to Europe. In the spring, in 1900, I was holding court at Birmingham, where I had a great many friends, and after that I went to Pensacola and rented a house.

"Mr. GILLET. Was that in 1890?

"JUDGE SWAYNE. That was in 1900. I think I moved there early in October. I then went North with my wife and son to spend Christmas week in Wilmington. On the 12th of the following January I was in Tyler, Tex., and two days later I got a telegram about the breaking down of my son's health, but I stayed on until February and finished the case and then came back, as his condition was very critical and serious, and, after a week or two, perhaps, I returned and held court and finished what I had to do and got back to Delaware that spring. In February, 1903, I was again in Tyler, Tex., and went early to Wilmington. In the spring we bought the property that had been formerly occupied by Judge A. C. Blount, in Pensacola, and moved in it the 1st of October. I never was a registered voter and I have not voted in 14 years. When I left Delaware I moved my domicile, and have taken no part in political questions arising in the State of Delaware or Florida. Mr. Turner, whom Mr. Laney said he did

not know, was an attorney for my matters for four years. My father died in 1889 and left property to my mother for life. She is still living, and the property comes to me and my sister as a residuary legatee at the time of her death. But that has never been my home, but I have spent my summers there mostly, arriving sometimes in June and sometimes in July, and from that point I could always reach Pensacola in 36 hours, and the record will show I have always been there to attend to anything of a serious nature. My recollection is that no one has ever suffered because of my absence, and I can offer testimony which will entirely clear up that proposition. My recollection is that, from the testimony taken, the most the committee has on this point before them is that counsel may have been sometimes inconvenienced in the summer time during my absence on vacation. As near as I can recollect, these are the facts which cover the period since I have been on the bench.

“ Mr. GILLET. Did the business of the court suffer because of your absence?

“ Judge SWAYNE. I never heard of it.

“ Mr. GILLET. The summer time was the time usually taken for vacations?

“ Judge SWAYNE. Yes; I so understand it. Another suggestion was that the only way to get rid of me would be to do away with the district entirely. But I do not suppose the parties care very much whether the office is abolished or not, just so long as they can get the individual.”

Bearing in mind that Judge Swayne is presumed to be learned in the law, and that he is fully aware of what is needful to enable a man to gain a legal residence and also to maintain an actual residence in a given place, it is apparent that he does not claim that, prior to 1903, he had either gained a legal or maintained an actual residence in the northern district of Florida. His testimony is prolific of reasons why he did not do so.

Apparently he had an actual and legal residence in St. Augustine, which was in his district before the boundaries were changed. After that event he broke up housekeeping and stored his furniture, then being advised, as he states, by some of his friends that the next or some succeeding Congress would be Republican and that the boundaries of his district would be extended. After that he attended the session of his court at Pensacola and Tallahassee, living at different boarding houses or hotels, being present substantially at no time except when court was in session. When he left Florida he states that he always left directions with his clerk that he would come back if needed. Correspondence was addressed to him at Guyencourt, Del.; that place he spoke of as his home. To that place he returned when his labors in his district were ended or after he concluded terms of court in other States. He had live stock and personal property at Guyencourt, in Delaware. His family generally lived there; sometimes abroad. In the year 1900 his wife rented a house in Pensacola and lived there with her husband a portion of the winter, going North with him about the holidays. Rent was paid for the house a year or more, but it was not again occupied by him or his family. He spoke to a bank cashier about being registered, but the bank cashier had nothing to do with the registration; that was an act which, under the law, must be attended to personally.

Judge Swayne never was registered. When there, did he gain even a legal residence in the northern district of Florida? Has he ever gained such a residence? His actual residence was measured by about 60 days in each year. Did he gain a legal residence when he broke up housekeeping and stored his furniture, awaiting the time when a Republican Congress would change the boundaries of his district, so that he would not need to move away from St. Augustine? Did he gain a legal residence when he asked the bank cashier about being put on the register of voters? Asking his clerk to find a suitable home for him to rent or purchase evidenced an intention to reside in Pensacola when such a house was found. It did not gain a residence for him while the fruitless search progressed. It may be gathered from Judge Swayne's testimony that he intended to reside in Pensacola some time when he could buy or build a house.

There was no place in the northern district of Florida where legal service of process could have been made on Judge Swayne during the 10 months of each year when he was absent from the State. The fact that Judge Swayne held court in other States, being assigned to do so by the circuit judge, does not tend to show that he had or had not a residence in his district. If to be present in the district during the time necessarily spent in holding the terms of court fixed by law, in March and November of each year, was to reside in the northern district of Florida, within the meaning of the act that requires a judge to reside in his district under penalty of being guilty of a high misdemeanor if he does not, then Judge Swayne has complied with the law and is not subject to be

charged on that ground. If he has persistently and continuously evaded and refused to obey this law, according to its plain intent, as the committee find from the testimony, then he should be impeached and sent before the triers.

Your committee can see no reason for overlooking or excusing his default. The law itself measures the grade of Judge Swayne's offense. It is a high misdemeanor. For that, by the express words of the Constitution, he is impeachable. It is not for the House of Representatives to seek for excuses exonerating a judge for a plain violation of statutory law, but to charge him before the tribunal fixed for the trial and let him abide the consequences of his act. If the Senate chooses to regard his excuses and exempt him from just punishment, the House will have done its duty to the people, and responsibility for miscarriage of justice will rest elsewhere.

#### THE CASE OF E. T. DAVIS AND SIMEON BELDEN.

*Second.*—The facts of the case, as set forth by the testimony, are as follows:

In the year 1901 an action of ejectment was pending in the circuit court of the United States at Pensacola in which Florida McGuire was plaintiff, and the Pensacola City Co. and numerous individuals, among them W. A. Blount and W. Fisher, attorneys at law, were defendants, for a tract of land called the Rivas or Chavaux tract. The plaintiff's lawyers were Louis Paquet and Simeon Belden, of New Orleans. In the month of October, in the year 1901, Paquet and Belden joined in a letter to Judge Swayne which they addressed to him at the place where he resided when not holding court in his district or elsewhere, viz., Guyencourt, in the State of Delaware, stating that they had been informed that he, the said Charles Swayne, had purchased a portion of the land in controversy in the said ejectment suit, viz., block 91, in the business part of the city of Pensacola, and requesting him to recuse himself and arrange for some other judge to preside at the trial of the case. To this letter no answer was returned by Judge Swayne.

At the term of court which convened at Pensacola in November Judge Swayne announced on the 5th of November that a relative of his had purchased the land, but later in the week he volunteered from the bench that the relative was his wife, and that she had purchased the land with money obtained from her father's estate. That the bargain had not been concluded for the reason that the owner, Mr. Edgar, offered a quitclaim deed. The evidence shows that the agents of Edgar, with whom Judge Swayne negotiated the purchase of block 91, and also of another lot, wrote him stating that Edgar would not give a general warranty because the land was part of a tract which was in dispute. Swayne answered saying that they might drop out block 91 without stating a reason. The agents had pending in October, when the letter to Swayne was written, a suit in the State court against Edgar for commission on the sale to Swayne. The agents had taken Judge Swayne over the tract, and had agreed upon the terms and had sold block 91 to him.

The custom in Judge Swayne's court was to dispose of the criminal calendar first, and when that was concluded to call the civil list, and set the cases for trial at convenient times in the future. The criminal cases were not concluded at the November, 1901, session until about 5 o'clock Saturday night. Judge Swayne then took up the civil list, upon which the case of Florida McGuire appeared, and made a further statement that the member of his family who had contracted through him for block 91 was his wife, and that she was purchasing with money derived from her father's estate. He declined to recuse himself, and stated that the case would be heard on the Monday following unless legal ground for continuance was laid.

The plaintiff's lawyer, Paquet, asked that the case should be set down for Thursday of the following week, averring that it was too late to summon witnesses that night; that Sunday they could not be summoned, and therefore the case could not be ready on Monday. This request was refused by Judge Swayne, who insisted that the case should go on on Monday. At about 5:30 or 6 o'clock the court adjourned. Neither Simeon Belden nor E. T. Davis was present in court at any time when Judge Swayne made announcement concerning his connection with the purchase of block 91. Belden being ill with facial paralysis and confined to his bed at the hotel in Pensacola. E. T. Davis was not of counsel in the case and had no connection with it up to the time that court adjourned on Saturday, November 9, at 6 o'clock. During the evening Paquet drew up the necessary papers to commence an action of ejectment in the county court of Escambia County, Fla., against Judge Swayne for this



block 91, upon the theory that he had contracted for the land with Edgar, who claimed to own it, and who had admitted that he was in possession and that the contract was subsisting between them, and that the title of the alleged owner could be tried out in the State court, where the parties would get better justice, Swayne standing in the shoes of Edgar. They took the liberty of believing, from all the evidence, that Judge Swayne was the real purchaser, thought he had said that the title was to be taken by his wife.

The papers were taken to Simeon Belden at his hotel, where he was ill, and he signed them. E. T. Davis was employed to bring this suit. At the same time it was agreed that the suit of Florida McGuire in Judge Swayne's court should be dismissed on Monday. Davis was engaged to do it, Paquet having been called to New Orleans by sickness in his family. The suit against Judge Swayne was brought that Saturday night and the process served on him. On Monday, at the opening of the court, Mr. E. T. Davis asked for and obtained from Judge Swayne an order dismissing the suit of Florida McGuire. Immediately, Mr. W. A. Blount, Esq., one of the defendants, and also attorney for defendants, arose and suggested that Paquet and Belden, attorneys for Florida McGuire, and Davis, who appeared to ask for a dismissal of the suit, had been guilty of contempt of court for bringing suit against Judge Swayne in the county court of Escambia County. This action was in pursuance of a previous conference between Blount and Swayne held before court convened, when it was agreed upon. Judge Swayne ordered a rule to show cause upon an unsworn statement prepared by Blount, which was served on Davis and Belden, Paquet being absent. The next day (Tuesday) Davis and Belden appeared and submitted an answer purging themselves of the contempt and averring their right, as counsel, to bring the suit.

Some testimony was taken to show that the suit against Judge Swayne had been brought and process served on him Saturday night about 8 o'clock; that was all. Whereupon Judge Swayne proceeded to adjudge Belden and Davis guilty of the "charges which were in violation of the dignity and good order of the said court and a contempt thereof," and after some abusive remarks sentenced them to be disbarred for the term of two years, to pay a fine of \$100 each, and to undergo an imprisonment for the period of 10 days in the county jail.

They were duly committed and remained confined three days, when they were released pending a habeas corpus allowed by Judge Pardee, of the circuit court. That habeas corpus case resulted in a decision that Judge Swayne had jurisdiction of Belden and Davis in a contempt proceeding, as the averment in the paper filed by Blount was that they were officers of the court, and therefore the circuit court could not question his decision, his findings of fact, or the correctness of his judgment that they had committed a contempt, except in so far as he had exceeded his jurisdiction by imposing both fine and imprisonment, the statutes providing in certain cases for fine or imprisonment as a punishment for contempt. To that extent the decision of Judge Swayne was reversed and the culprits allowed to choose which they would suffer, fine or imprisonment. Belden, who was a very sick man, about 70 years of age, chose to serve out his sentence in prison; Davis paid the fine of \$100.

Your committee are of opinion that Judge Swayne was guilty of gross abuse of judicial power and misbehavior in office in this case. They believe that he had no authority or right to adjudge Simon Belden and E. F. Davis guilty of a contempt of court under the circumstances of the case.

Second. That if authority can be found in the law for holding the action of these attorneys a contempt, that in the absence of evidence of intent to commit a contempt other than that to be gathered from the fact that the suit was brought Saturday night and the process served the same night, and in the face of their answer that no contempt was thought of or intended, to adjudge them guilty was a gross abuse of power.

Third. That the sentence imposed by Judge Swayne was unauthorized and unlawful. It can be accounted for only on the theory that the judge imposing it was ignorant or vindictive.

The statute conferring power upon the court of the United States is as follows:

"The said courts shall have power to impose and administer all necessary oaths and to punish by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempt shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice,

the misbehavior of any of the officers of said courts in their official transactions and the disobedience or resistance by any such officer or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said court."

In his address to the subcommittee Judge Swayne was asked to point out the part of the statute which conferred the authority for his action. He said, "The words 'the misbehavior of any of the officers of the said courts in their official transactions.'"

At the time he sentenced Davis and Belden Judge Swayne declared that the contempt did not consist in bringing the suit in the State court; that the attorneys had a perfect right to sue him there, but that his belief was that the suit was brought to force him to recuse himself in the case of Florida McGuire.

It must be remembered that at the time the sentence was pronounced, indeed, before the contempt proceeding was commenced, the case of Florida McGuire had been ended by the consent of Judge Swayne, upon motion of E. T. Davis, for the plaintiff, and that the agreement to end the case had been reached by the lawyers, Paquet, Davis, and Belden, before the suit was instituted against Swayne in the State court on Saturday. How, then, could their action in bringing that suit be construed into an attempt to force Judge Swayne to recuse himself in the case of Florida McGuire? Such a pretense was idle, especially in view of the fact that the purpose to arrest and punish these men for contempt of court had been formed and agreed upon between Blount and Swayne in the morning before court met and before either could know that the Florida McGuire case was to be dismissed by the plaintiffs. The accused lawyers had a right to bring the suit. Their motive could not have been to affect in any way the disposition of the Florida McGuire case in Judge Swayne's court, because that case being ended could not be affected or the conduct of the judge influenced thereby.

There was no testimony before the court from which a conclusion as to the motives of the accused could be judged except the fact that the suit had been brought in the State court Saturday night and the process served that night. The fact, viz, that the process was served Saturday night, was, in Judge Swayne's eyes, according to his statement before the committee, the chief gravamen of the offense. From that fact he concluded that the motive of the accused was to "insult the dignity and disturb the good order of his court." The committee is of opinion that there was no evidence before Judge Swayne from which such a motive could be inferred, certainly not from the facts in evidence before him.

The words under which he claims the right to condemn have been quoted, but they do not fit the case. They are the "misbehavior of any of the officers of the said courts in their official transactions." The act complained of was not done by these men as officers of the district court of the United States. They were acting as officers of the court of Escambia County, Fla., in bringing the suit. Therefore the action was not susceptible of being construed as a contempt of the district court. It was not an official transaction in any sense by officers of the United States court. Their character as officers or attorneys of that court gave them no power to do the act complained of. It was only because they were attorneys of the court in which the suit was brought that they could do it.

If it was an "official transaction" it was an official transaction in the county court of Escambia County, not in the district court of the United States. Certainly no one will contend that Judge Swayne could punish them for an official transaction in another court, no matter how offensive it might be to his dignity or humiliating to his pride or disgracing to his character; certainly such an act could not offend against the "dignity or good order of his court."

If, then, they could not be properly fined and imprisoned for bringing the suit, what offense did they commit that warranted such severe and disgracing punishment?

But it may be contended no judge can be held responsible for a mistake of law. All judges make mistakes. For an error of judgment or wrong exercise of discretion a judge ought not to be and can not be punished. Let this contention be granted. At the same time, none can dispute that for a misbehavior in office a judge may be impeached.

All the cases that have been tried may be cited as proof of that proposition.

Judge Pickering was impeached by the House and convicted by the Senate for releasing the ship *Eliza* to her owner without taking a bond after she had been seized for violating the excise law, and for appearing upon the bench when drunk, and for using profane language.

Judge Addison was impeached and removed from office for refusing to allow an associate judge to address a grand jury and a petit jury.

Judge Chase was impeached for refusing to allow counsel to address the court and jury upon a point of law that had already been decided.

Judge Peck was impeached for disbarring and imprisoning a lawyer who wrote and published a criticism of one of his opinions.

In all these cases the defense was stoutly made that they were mere mistakes of law, not indictable, and therefore not subject for impeachment. It did not avail to prevent the House from preferring charges. If this reason is good, then no judge can be called to answer for a misbehavior in office which is not also an indictable offense. This is not the law nor the practice.

In imposing sentence upon Davis and Belden Judge Swayne exceeded his authority by imposing both fine and imprisonment. This error was set right by Judge Pardee, the circuit judge, but not until both had served three days in the common jail.

The animus and evil intent of the judge was manifest by his action and speech. So eager was he to punish that he disbarred these lawyers for a term of two years. If his amicus curia, Blount, had not warned him, that unlawful sentence would have remained. His speech when imposing sentence is described by the witness.

"SIMEON BELDEN testifies:

"Q. Now I will ask you what was the manner of Judge Swayne when he was inflicting this penalty?—A. Well, it was gross and offensive; he entered with a slanderous attack on the attorneys.

"Q. Very slanderous?—A. Yes.

"Q. Tell what he said.—A. I don't recollect his words exactly; it was published in the newspapers here.

"Q. It was harsh and offensive?—A. Very, indeed (p. 264-265).

"E. T. DAVIS, page 284:

"Q. At the time of imposing this sentence what was Judge Swayne's manner?—A. Very abusive.

"Q. Can you state what he said?—A. I don't know that I can state it in so many words. He called us ignorant, said our action was a stench in the nostrils of the people, and a good many other things I can not repeat.

"Q. His manner was very harsh and abusive?—A. Extremely so."

For a constructive or indirect contempt it is the law that one charged may purge himself, and that he can not thereafter be punished. In this case Judge Swayne listened to no excuse. He found an evil motive for a lawful action without evidence and against the oath of the accused. The excessive and unlawful character of the sentence and the grossly offensive manner in which it was pronounced leave no room for doubt that Judge Swayne was not animated by a desire to protect the dignity and good order of his court, but to punish what he considered a personal affront to himself. This constituted an arbitrary, unlawful, and oppressive abuse of his judicial power, and a high misdemeanor in office.

The fact can not be disputed that Judge Swayne imposed a punishment on Davis and Belden which the law did not warrant. The only question in the case, then, is whether he is to be excused and go unpunished on the ground that he made an innocent mistake of law. No one doubts the proposition that a judge can not and ought not to be held responsible for innocent mistakes of law. Neither can anyone justly contend that a judge should not be punished according to law for knowingly and willfully imposing an illegal sentence. Whether his motive be revenge or mere wanton disposition to exercise arbitrary power or an intention to punish for a personal insult, in either case he can not be held guiltless or excused on the plea that he innocently erred.

The great question, then, in every case that arises must be, Why did he do it? What motive prompted? What intent animated? Being a human being and not divine or infallible, the actions of a judge are to be interpreted by the same rules that apply to the actions of other men. It is not to be supposed that a judge who evilly intends to do an unlawful act will declare his intention or publish his purpose. The motive and intention of a judge must therefore be sought and generally will be made plain by the circumstances surrounding the particular case. If a judge has no personal interest or feeling in a matter under consideration, if coolly, calmly, and with deliberation he reasons himself into giving a wrong judgment, a wrong motive is never or rarely ever attributed to him. On the other hand, if the case involves a question of insulted dignity, a personal affront, or, if with heat and passion, if with vituperation,

tion and denunciation a judge imposes a harsh and unlawful sentence upon a prisoner, his motive is not a matter of doubt. His motive is as plain as that of a man who assaults with a deadly weapon. Such a man is held responsible for the natural and reasonable consequence of his act. He can not be heard to say, "I made a mistake; I thought I had a right to strike with a club a blow which produced death." The law pronounces a layman and a judge who knowingly does an unlawful act conclusively guilty of an unlawful intent.

Apply these principles to the case in hand. Judge Swayne knew that the act of 1831 limited the powers of United States courts over contempt to the special cases named in the act. He knew it, because the Supreme Court of the United States has many times decided the very point, notably in 19 Wallace, 511, where it is said:

"The act of 1831 is therefore to them (the district courts) the law specifying the cases in which summary punishments for contempt may be inflicted. It limits the power of these courts in this respect to three classes of cases—

"First. Where there has been misbehavior of a person in the presence of the court, or so near thereto as to obstruct the administration of justice;

"Second. Where there has been misbehavior of any officer of the court in his official transaction; and.

"Third. Where there has been disobedience or resistance by any officer, party, juror, witness, or other person to any lawful process, order, rule, decree, or command of the courts. And thus seen, the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgment, and processes."

Presuming that Judge Swayne knew the law, he knew that proceeding for a contempt not committed in the presence of the court must be founded on an affidavit setting forth the facts and circumstances constituting the alleged contempt, sworn to by the aggrieved party or some other person who witnessed the offense. Unless such affidavit be presented process will not be granted. (*Burke v. The State*, 47 Ind., 528; *Batchelder v. Moore*, 42 Cal., 412; *Rapalje on Contempts*, p. 122.)

"The most common and, in the United States, the almost universal practice in this matter is to present to the court an affidavit setting forth the facts and circumstances constituting the alleged contempt, sworn to by the aggrieved party or some other person who witnessed the offense. Unless such affidavit be presented process will not be granted." (*Burke v. State*, 47 Ind., 528; *Re Judson*, 3 Blatch., U. S., 148; *Batchelder v. Moore*, 42 Cal., 412; *Whittem v. State*, 36 Ind., 196.)

Judge Swayne knew that issuing of proofs without filing the proper affidavit was erroneous, and that the error is not cured by a subsequent filing thereof. (*Wilson v. The Territory*, 1 Wyo., 155; *Whittem v. The State*, 36 Ind., 196; *McConnell v. The State*, 46 Ind., 298.)

He knew that in a rule to show cause why a person shall not be punished for contempt the actual intention of the respondent is material, in which respect it differs from an indictment for the like offense. Therefore, when the respondent meets the words of the rule by disavowing, upon oath, any intention of committing in contempt of court the rule must be discharged. (63 N. C., 397.) He knew that the practice in the courts of the United States, as well as in the State courts, was:

"If the party purge himself on oath the court will not hear collateral evidence for the purpose of impeaching his testimony and proceeding against him for contempt, but if perjury appear the party will be recognized to answer." (*U. S. v. Dodge*, 2 Gall., 313 Circuit Court U. S. 1st Circuit, Mass.; in the matter of John I. Pitman, 1 Curtis, 189, contempt proceedings.)

"The master did not treat the answer of the clerk as evidence. This was erroneous, as will plainly appear when we consider what this proceeding is. \* \* \*

"Now, one of the most important privileges accorded by the law to one proceeded against as for a contempt is the right to purge himself if he can by his own oath. So rigid is the common law as to this that it does not allow the sworn answers of the respondent to be controverted as to matter of fact by any other evidence." (*U. S. v. Dodge*, 2 Gall., 313.)

The rule was the same at common law:

"If any party can clear himself upon his oath he is discharged." (4 Bl. Com., 286, 287; *Burke v. The State*, 214 Ind., 528.)



"When the answer to a rule to show cause why one should not be attached for contempt negatives under oath any intentional disrespect to the court of purpose to obstruct its process the rule should be discharged." (In re Wilson Walker, 82 N. C., 95.)

Knowing the law, Judge Swayne issued a rule to show cause why Davis and Belden should not be committed for contempt upon an unsworn statement of Mr. W. A. Blount. He put upon the record another statement of his own presumptively as evidence or as a justification of his act—an unsworn statement of alleged facts, some of which were true and some untrue.

He ignored the sworn denial of the accused that they had committed or had intended to commit a contempt and without any evidence whatever to establish the fact, except that they had brought a suit against him in the State court and served him with process Saturday night. He condemned them to be disbarred for two years, to be fined, and cast into prison. The charge against them and of which they were convicted was a contempt of the "dignity and good order" of the district court of the United States. The offense consisted, as stated by Judge Swayne, not in the act, but in the intent with which it was done, viz, to force him to recuse himself in the case of Florida McGuire.

Suppose, for the sake of argument, that such was their intention, viz, to force the judge to recuse himself. The intent was never carried out. No one was harmed. The judge was not forced to recuse himself. The suit against him in the State did not exercise any influence on him in that direction, for the very good reason that the suit in his court was disposed at the request of the plaintiff, with his consent, at the opening of the court on the first secular day after the suit was brought against him in the State court. The law does not punish guilty intentions. One may intend to slander, steal from, or even kill his neighbor. If the intent is never carried out no human law exists to punish.

All these plain and common principles Judge Swayne must be presumed to have known. Therefore he knowingly and unlawfully held these attorneys guilty of a contempt when none had been committed, when none could have been committed which were punishable under the act of Congress, and he did it in violation of the well-established law of procedure in such cases.

We are seeking for the motive which actuated Judge Swayne in the light of the circumstances. He must have known that he had no right to impose a fine and also an imprisonment upon these officers of his court. The act of Congress is very plain. A wayfaring man, though a fool, need not err there. It provides fine or imprisonment, not fine and imprisonment. The Supreme Court, with whose decisions Judge Swayne will not plead that he was not familiar, has also settled that point. (See 131 U. S., 267.)

Again, still in search of the motive of Judge Swayne in imposing this unlawful punishment, attention is called to the fact that he sentenced these lawyers to disbarment for two years; in other words, to ruin. To forbid a lawyer the right to practice his profession for two years is, standing alone, a severe sentence. Such a sentence will scatter a lawyer's practice; seriously damage, if not irretrievably ruin; his reputation, and generally destroy his usefulness and earning power. Ought Judge Swayne be heard to say that he knew no better? Evidently if he might it would be true, because when his *amicus curia* stepped up to the bench and suggested to him that he had exceeded his authority he remitted that part of the sentence. He ought not to be heard to plead his ignorance, because the highest court decided (19 Wallace, 512) that punishment by disbarment could not be imposed under the act of 1831. The fact that he found it in his heart to impose such an unlawful sentence is helpful in ascertaining the true intent that actuated him in the whole transaction.

The last evidence that Judge Swayne was actuated by an evil intent to punish a personal affront by a clear violation of the law and an arbitrary abuse of judicial power is found in his vituperation and abuse of the respondents at the time he sentenced them. The facts, as stated by them, are not denied by the judge or his *amicus curia*, who both testified in the case. His manner was "offensive and insulting." He denounced these lawyers as "ignorant." He vituperated them as a "stench in the nostrils of the people." From these circumstances the fact is found that Judge Swayne had something in his heart besides an honest intent to vindicate the dignity of his court, and that that something was an intent to punish these unfortunate persons who had fallen into his power, not for offending against the dignity and good order of the court, but for what he conceived to be a personal affront.

Doubtless an argument may and will be made that Judge Swayne believed that the lawyers, Paquet, Belden, and Davis, brought an unfounded action

against him for the purpose of influencing his action in the Florida McGuire case, and also that their conduct in bringing the suit after dark Saturday night and procuring the service of process upon him that night was intended as a personal affront, and that he also believed they caused to be published in the papers next morning notice of the suit (which was not proved), and therefore he was properly and righteously indignant and should be leniently dealt with, because what he did was done under provocation and in the heat of his displeasure.

The answer is that if he had observed the common rules of administering justice and had decided the case as the law requires, he would never have thought for a moment of punishing a constructive contempt after the accused had purged themselves under oath.

Certainly no hurt feelings, no offended dignity, even no legitimate desire to punish a punishable contempt, could justify or excuse the grossly unlawful and excessive punishment imposed in this case.

If the independence of the judiciary and their power to protect their own dignity and honor are indispensable to a free government, the right of the great body of earnest, learned, and faithful men who practice at the bar to be exempt from cruel, unusual, and unlawful punishments at the hands of judges for imaginary or real offenses is no less sacred.

For such a high misdemeanor in office no judge should be allowed to escape just punishment on the plea that he made a mistake of law. If allowed, there is no arbitrary abuse of discretion, no disobedience of law, no oppression or outrage upon the rights of liberty or property that could not go unwhipt of justice.

#### HOSKINS CASE.

*Third.*—The case of W. H. Hoskins is one of peculiar hardship. This man was advanced in years and was unable to read or write. He was engaged in the business of producing turpentine, growing cotton, and general merchandising. He had accumulated property worth about \$40,000 and owed debts amounting to about \$10,000. A part of this indebtedness was of the firm of Hoskins & Hilton, of which he had been a partner. He had sold out his interest in the firm under an agreement that the purchaser would pay the indebtedness of the firm. This agreement was not kept, and some suits were brought against Hoskins, in which he was defended by a lawyer named J. N. Calhoun, on the ground that the suit should have been brought against the person who had agreed to pay the debts. Of course, the defense failed and Hoskins paid.

This was the beginning of trouble. The evidence is full and convincing that a lawyer named Boone conspired with Calhoun to put Hoskins in bankruptcy in order to plunder his estate. Some claims came into their hands for collection. Hoskins paid promptly on demand, and notified Boone, through his counsel, Judge Liddon, that he was prepared to pay everything he owed. Boone secured claims to the amount of \$500, and without authority of his clients commenced proceedings involving bankruptcy against Hoskins, swearing to the petition himself. Certified checks were sent to all the creditors; some took them and withdrew; others were deterred by Boone's action. He told them that they would subject themselves to large costs and fees if they took their money.

Judge Swayne, against objection, gave time to Boone to obtain a proper verification of the complaint; then to get more creditors to sign the petition in place of those withdrawn. This he did at least twice. Hoskins filed a denial of insolvency and demanded a trial. Meantime one Tunison, United States commissioner and next friend of Swayne, was taken into the conspiracy. Hoskins was adjudged bankrupt, a receiver was appointed, all his property seized, his store closed, his men intimidated, and ruin stared him in the face, as his business of producing turpentine needed daily care. He went to Boone with the money to pay all his debts. Boone told him he would be in contempt of court if he attempted to pay money to the creditors, and demanded \$1,000 for himself, and \$1,000 for Tunison, and all costs. Hoskins refused.

Calhoun, as receiver, sent a man named Richardson to seize Hoskins's books of account at one of his branch stores. He found a book belonging to the firm of Hoskins & Bro., which had been left there for a bookkeeper to make up. On his return he met C. H. Hoskins, a son of W. H. Hoskins, one of the firm of Hoskins & Bro., who demanded the book, stating that it did not belong to his father and contained nothing pertaining to his business. Richardson refused to give it up; a fight ensued, and young Hoskins took the book by force. The next step of the conspirators was to commence proceedings for contempt of court against young Hoskins. The motive is fully explained by a letter from Boone to Tunison.



[Robt. J. Boone, attorney and counselor.]

MARIANNA, FLA., *March 13, 1902.*

GENTLEMEN: In re W. H. Hoskins, involuntary bankruptcy.

I beg to inclose you herewith another claim to be added to the amended petition, to the amount of \$200, which you will please have the court to include. I have just received telegram from Calhoun stating that the petition had not yet arrived. I have wired for same three times in the last two days and trust same will reach you to-night. This additional claim of \$200 is a stunner to them I presume.

I trust you all will be able to handle the matter all right. I feel sure that we have them coming our way now, and if we can have C. D. Hoskins attached for contempt it will break the old man down sure.

Please advise me in the premises as early as possible and oblige,

Very truly, yours,

ROBT. J. BOONE.

Messrs. TUNISON & LOFTIN, *Pensacola, Fla.*  
(Inclosures.)

W. H. Hoskins, finding that he was not allowed to pay everything, averred his solvency and demanded a trial on that question. Judge Swayne refused to proceed with the case until the book taken by young Hoskins was produced.

The following motion was made by Mr. Tunison on behalf of petitioning creditors:

"On account of the forcible taking away of certain books belonging to the estate of the alleged bankrupt, by the son of the bankrupt, from the possession of the receiver herein, as fully set forth in the petition and affidavit of J. M. Calhoun, receiver, heretofore filed, which books are essential to the ascertainment of the true condition of the estate, and the continued withholding of the books from the custody of the receiver, petitioning creditors ask for a postponement for such a time as will enable them to secure the information believed to be contained in those books."

By Mr. Eagan, representing intervening creditors; also by Judge B. S. Liddon and W. H. Price, representing W. H. Hoskins, respondent.

"Now, your honor, we desire to oppose the action for a postponement and continuance on the grounds stated, for the reason that the said C. H. Hoskins alleged to have the books in question, is not a party to the record of these proceedings; for the further reason that those books are not under the control of the intervening creditors or respondent, W. H. Hoskins; on the further ground that it is not true that the books contain any matter, items, or accounts, or any business transactions of any kind or in connection with the business of W. H. Hoskins, who is the respondent, or of any firm with which he was ever connected, or of which he was a member, and we are ready now to submit to your honor proof of these facts by W. H. Hoskins, W. H. Price, who has recently examined these books, and also by T. A. Jennings, vice president of the J. P. Williams Co., Savannah, Ga., that he has recently examined these books—that is, since the beginning of these proceedings—and that the same did not contain any accounts or business transactions of any kind of the business of W. H. Hoskins or in connection with these proceedings.

"We also proffer to prove the same things by W. H. Hoskins, who also knows the books and what they contain.

"We offer to prove that the books in question are the books of a firm called Hoskins Bros., composed of J. P. and C. D. Hoskins, and have reference solely to the matters of said firm, and that W. H. Hoskins was never in any manner a partner or in any way connected with said firm; and further, that the books are not absent by the consent or advice of counsel or any of the intervening creditors herein, or of the said W. H. Hoskins, and that none of them know the whereabouts of the said books or have seen them since the absconding of the said C. D. Hoskins.

"By the COURT: The court, in answer to the motion, states that it believes from the showing and circumstances—the only showing before the court was an affidavit by Calhoun, who had never seen the book, that he believed it contained something important—that the bankrupt in this case is in a measure responsible for the absence of the books in question, and under these circumstances can not permit the bankrupt nor his friends to testify to their contents in their absence until some better showing is made or tendered as to their whereabouts."

W. H. Hoskins was present in court with his counsel and offered testimony of several disinterested persons who knew the facts that the books to which Judge Swayne alluded had been taken by one C. D. Hoskins, to whom, as one of the firm of Hoskins & Bros., they belonged; that W. H. Hoskins, the alleged bankrupt, had no interest in said firm; that the said books were not in the possession of W. H. Hoskins or under his control; that they contained no written items or accounts of any business transacted of any kind connected with the business of W. H. Hoskins, or of any firm of which he was ever a member, and that he had nothing whatever to do with the taking or any knowledge of their whereabouts.

Notwithstanding, the said Charles Swayne, in the absence of any evidence to the contrary save an affidavit of one Calhoun, who had never seen the books, but swore he believed they contained something of importance in the case, refused to proceed with the case, stating that he "would not believe the evidence offered if sworn to by his brother," and continued the hearing of the same without day, to the great injury of the said W. H. Hoskins.

Young Hoskins had been hiding out to escape arrest, of which he was so fearful that he said he would rather die than go to jail. His uncle, one Rhodus, went to Tunison, who had instituted the contempt proceeding, and paid him \$50 and agreed to give \$50 more if Tunison would intercede with Judge Swayne to let young Hoskins off with a fine without imprisonment. Tunison took the money, but Swayne insisted upon going on with this case against young Hoskins, who finally put an end to Swayne's persecution by taking his own life.

W. H. Hoskins, despairing of getting justice or a hearing, paid the creditors in full and such costs as Calhoun demanded.

The whole disgraceful perversion of law and justice was made possible by the complaisancy, stupidity, or worse, of Judge Swayne, who lent himself to a conspiracy to ruin an honest man by aiding the conspirators in every way in his power. He had no right to refuse a hearing to Hoskins on the ground that a book taken out of the custody of the receiver's clerk by any other person must first be produced. It was a denial of justice. It was an arbitrary and oppressive abuse of power. There was no sufficient testimony before the judge that the book had any relevancy to the case; nothing but the affidavit of the receiver, who had never seen the book, that he believed it contained something necessary to the determining of the question of Hoskins's solvency. In the face of an offer to prove the fact by disinterested and competent testimony, among others that of a person who had examined it, the judge refused to believe anything, saying that he would not believe his own brother if he would swear to it. In his argument before the subcommittee Judge Swayne was asked why he refused to hear Hoskins's witnesses to prove that the book was that of Hoskins Bros., and contained nothing whatever pertaining to the business of W. H. Hoskins. His answer was "because he would not believe the witnesses."

Being interrogated by the subcommittee as to why he refused to hear Hoskins's witnesses, Judge Swayne testified as follows:

"Mr. PALMER. Did not you state it was unnecessary for Hoskins to submit any proof about these books? Does not the record show that?"

"Judge SWAYNE. There was a witness upon the stand who testified as to Mr. Hoskins's ability to pay his debts.

"Mr. PALMER. But what had that to do with the proof submitted by the witness Jennings?"

"Judge SWAYNE. Well, that requires a further answer. And there was, I believe, some evidence by a man they called Price, on this subject, but that man's name was not Price, although he went by that name. He was designated as Price, but his name was really something else, which I do not now recall.

"Mr. PALMER. Then you mean to say, in substance, that you did not have any confidence in that witness?"

"Judge SWAYNE. I certainly did not.

"Mr. PALMER. Well, do you think a judge has the right to take that view of a witness in the administration of justice?"

"Judge SWAYNE. Yes, sir.

"Mr. PALMER. At the time you made that ruling was there any proof that Hoskins had ordered his son to take the books back?"

"Judge SWAYNE. Well, I wanted to have the books in court when the trial came on or show that they could not be had.

"Mr. PALMER. That is just the point. And you refused to hear anything on the point and would not hear the witness or hear the testimony?"

"Judge SWAYNE. I did not see how I could."

"Mr. PALMER. That is correct, is it?"

"Judge SWAYNE. Yes, sir."

This action of the judge presents at least an entirely new feature in the administration of justice. A suitor is denied the right to offer evidence in support of his case because the judge has made up his mind in advance that the witnesses offered are not worthy of belief.

In this case Mr. Price, one of the witnesses, was a practicing attorney of the courts of Florida, and presumptively a perfectly worthy man. Mr. Jennings was one of the largest producers of turpentine in the State, a substantial business man, personally known to at least one member of the committee to be of irreproachable character and standing. W. H. Hoskins was at least competent to testify that the book was not his and was not used in his business.

To refuse to hear these witnesses was an unwarranted and unheard-of proceeding. To continue the case of Hoskins without day, under the circumstances, was an unparalleled abuse of discretion on the part of the judge, which amounted to a denial of justice.

#### O'NEAL CASE.

*Fourth.*—The facts in the case of W. C. O'Neal are as follows:

One Greenhut had been appointed trustee in bankruptcy of one Scarritt Moreno. Greenhut brought an action in the county court of Escambia County for the purpose of having certain land, the title to which was in the bankrupt's wife, brought into the bankrupt's estate, and also to relieve the said land of a certain mortgage of \$13,000, which appeared to be a lien upon it, which had been given the National Bank of Pensacola and by them assigned to the bank. Greenhut was a director and O'Neal was president. Greenhut was also indorser on Moreno's paper in the bank for \$1,500.

On the 20th day of October O'Neal was passing along the street in front of Greenhut's store. Greenhut was in conversation with another man. O'Neal spoke to him and said when he was at leisure he wished to speak with him. Greenhut said he could speak at once and invited him to enter his store. O'Neal reproved Greenhut for including the bank in the suit which he had brought. He stated to Greenhut that he, Greenhut, was aware of the fact that the \$13,000 mortgage was genuine; that the bank had advanced the money and had parted with it for a valuable consideration; also that he, Greenhut, had often promised to pay the indorsed paper upon which he was liable to the bank, but had not done so. But words passed, when O'Neal passed out of the store, followed by Greenhut to the sidewalk, where an affray occurred in which Greenhut was stabbed by O'Neal with a pocketknife and seriously injured. O'Neal swore that Greenhut assaulted him and that, being a much weaker man physically, he defended himself with a small pocketknife.

A proceeding for contempt of the district court of the United States was commenced, in which B. C. Tunison appeared for the receiver, Greenhut.

At the time of the affray the district court was not in session. The difficulty took place at a considerable distance from the courthouse on a public street. Judge Swayne was not at the time in the district.

The charge for contempt proceeded upon the theory that the assault having been made upon a receiver in bankruptcy appointed by the district court for some matter growing out of his actions as receiver, that a contempt of the district court had been committed. O'Neal had been arrested in the State court for his offense against the law. When the rule to show cause why he should not be committed for contempt was served, he employed counsel and made answer, denying any intent to commit a contempt of court.

The testimony of Greenhut and O'Neal was taken; none of the bystanders were sworn, nor was any other person sworn. O'Neal denied the contempt and explained that the quarrel grew out of the relations of Greenhut to the bank and what he claimed to be his dishonesty in including the bank in the suit. Greenhut contended that he was an officer of the court and that he had been assaulted on account of his official acts and as a consequence had been laid up for a period of time and rendered unable to perform his duty as receiver.

Judge Swayne sentenced O'Neal to be imprisoned in the county jail for a period of 60 days.

The act of Congress defining the power of the United States courts to punish contempt is as follows:

"The said courts shall have the power to impose and administer all necessary oaths and to punish, by fine or imprisonment, at the discretion of the court, contempt of their authority: *Provided*, That such power to punish contempt shall not be construed to extend to any cases except the misbehavior of any person in their presence or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said court in their official transactions, and the disobedience or resistance by any such officer or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said court."

Manifestly the case of O'Neal was not within the act. The offense was not committed—

(a) In the presence of the court.

(b) Or so near thereto as to obstruct the administration of justice.

(c) It was not a misbehavior of an officer of the court in an official transaction.

(d) Was not resistance of any lawful act, order, rule, decree, or command of said court by any person.

This act was passed after an unsuccessful attempt to impeach Judge Peck for striking the name of an attorney from the roll for an alleged contempt of court committed by him in publishing a criticism of a published opinion of the judge in a case in which the attorney had appeared and which had been appealed.

The impeachment proceedings provoked long discussion as to the common-law power of United States courts to punish contempt not committed in the presence of the court. To set doubts at rest and to define the powers of such courts this salutary act was passed. It bounds and limits the rights and powers of these courts, and its transgression ought not to be regarded lightly in cases involving the liberty of citizens of the Republic.

The action of Judge Swayne was, to say the least, arbitrary, unjust, and unlawful. It could have proceeded only from either willful disregard of the law or from ignorance of its provisions, an excuse which he will not be likely to set up.

If an unlawful act is committed by judge or layman the law conclusively presumes an evil intent.

The theory upon which O'Neal was held guilty of contempt of court was:

(a) That Greenhut was an officer of the court.

(b) That he was assaulted for performing an official act in the line of duty.

(c) That he was disabled by the assault from performing his duties as receiver for about two weeks.

Suppose all the allegations to have been proved, before the assailant of Greenhut could be held guilty of contempt of court some proof should have been produced to show that O'Neal's purpose in committing the assault was to punish Greenhut for his official action and to disable him from performing his duty as receiver.

If his purpose was to rebuke Greenhut for his bad faith as a bank director, or if the quarrel between the men which resulted in the fight had its origin in a dispute about Greenhut's knowledge that the mortgage was genuine or that Greenhut was endeavoring to escape liability upon his indorsement to the bank of Moreno's paper, and if he had no thought of the court or intention to interfere with its operations, then certainly he was not guilty of a contempt. O'Neal did not assault Greenhut because Greenhut had sued the bank, but because he had sued the bank knowing that his contention was false. That was the occasion of O'Neal's remonstrance which led to the fight.

Whatever his purpose, the assault was not committed in resistance of any order, decree, rule, or command of the court. No one pretends that it was. The only claim is that the court has power and should protect a receiver in bankruptcy by punishing anyone who quarrels with him on account of anything he does in the line of his duty as receiver. If it has such power, it is not conferred by the statute. And as the district court has no other authority to punish for contempt except that which is conferred by the statute, the conclu-

sion is that in this case a citizen of the United States was unlawfully condemned to prison.

The answer of O'Neal purged the contempt, and it was error to punish him for it.

#### CASE OF YOUNG HOSKINS.

The contempt proceeding against young Hoskins was instituted by Brown Calhoun and Tunison to "break the old man down" in furtherance of their nefarious scheme to force him into bankruptcy to the end that they might plunder his estates. It was based upon the theory that Hoskins had resisted an order of the court—not a special order but the general authority of the receiver in bankruptcy, to possess himself of the property of the bankrupt. If the book did not belong to the elder Hoskins, and contained nothing pertaining to his business, then the receiver had no right to take it. If he had no right to take the book, then young Hoskins could not be lawfully adjudged guilty of contempt in resisting.

The law upon this point is settled to numerous cases as follows:

"Disobedience to unauthorized requirement is not a contempt. An order punishing is void when the court had no authority to make the order disregarded." (104 U. S., 612.)

The court could not lawfully order the receiver of W. H. Hoskins, the father, to seize and carry away the property of C. H. Hoskins, the son. If such an order had been made it might have been lawfully resisted, but no such order was made. The receiver was acting under his general power which certainly gave him no right to take and carry away the book in question if it did not belong to the bankrupt. Hence the important and only question was, Whose book was it? Upon this question Judge Swayne refused to hear testimony. He had no evidence before him bearing upon the question of the ownership of the book but the affidavit of Calhoun, the receiver, who had never seen it and swore only to his belief that it was the book of the elder Hoskins.

Young Hoskins hid in the woods for some weeks to avoid arrest. He had a mortal dread of going to jail, and said he would die first; and die he did. Judge Swayne refused the request of Tunison, the receiver's counsel, to let Hoskins off with a fine without imprisonment if he would plead guilty, although the bankrupt business had all been settled, and the production of the book was no longer of the least consequence. Judge Swayne refused to hear evidence on the subject of the ownership of the book on the ground, as before stated, that he would not believe the witness, and that he would not believe his own brother if he swore that the book did not belong to old Hoskins. When the news of the failure of the effort to procure his discharge reached young Hoskins, he committed suicide. These facts need no comment.

#### TUNISON CASE.

*Fifth.*—The evidence established the fact that Judge Swayne reappointed B. C. Tunison commissioner of the United States after a trial in his court in which Tunison, as prosecutor, had been successfully impeached as a witness.

The evidence also establishes that the members of the bar at Pensacola, Fla., and elsewhere in the district, and suitors in the United States court are of opinion that Tunison has the power to exercise undue influence over Judge Swayne and that he does exercise such influence. To such an extent does this belief prevail that lawyers advise their clients to employ Tunison in their business as the best and only way to succeed in Judge Swayne's court.

No special act of favoritism were shown. Neither was it proved that Tunison won an undue proportion of cases in the United States court. Nevertheless, the opinion stated is widely entertained. Tunison was shown to be very friendly with Judge Swayne—so friendly that he declined to pursue a habeas corpus case in which he had received a fee of \$100, averring that he did it because Judge Swayne was his friend. The case referred to is that of Davis and Belden, committed by Judge Swayne for contempt of court. It may be remarked that Tunison neglected to return the retainer. The testimony satisfies the committee that Tunison is a dishonest man; also that he is indorser on a note of Judge Swayne that has been renewed for seven successive years in the Pensacola Bank.



The charges and specifications not covered by the foregoing findings were not proved by sufficient evidence to warrant action upon them.

Upon the whole case it is plain that Judge Swayne has forfeited the respect and confidence of the bar of his court and of the people of his district who do business there. He has so conducted himself as to earn the reputation of being susceptible to the malign influence of a man of notoriously bad character. He has shown himself to be harsh, tyrannical, and oppressive, unmindful of the common rule of a just and upright judge. He has continuously and persistently violated the plain words of a statute of the United States, and subjected himself to punishment for the commission of a high misdemeanor. He has fined and imprisoned members of his bar for a constructive contempt without the authority of law and without a decent show of reason, either through inexcusable ignorance, a malicious intent to injure, or a wanton disposition to exercise arbitrary power. He has condemned to a term of imprisonment in the county jail a reputable citizen of the State of Florida over whom he had no jurisdiction, who was guilty of no thought of a contempt of his court, for no offense against him or in the presence of the court, or "in obstruction of any order, rule, command, or decree," and after the accused had purged himself on oath.

For all those reasons Charles Swayne has been guilty of misbehavior in his office of judge and grossly violated the condition upon which he holds this honorable appointment. The honor of the judiciary, the orderly and decent administration of public justice, and the welfare of the people of the United States demand his impeachment and removal from the high place which his conduct has degraded.

It is vitally necessary to maintain the confidence of the people in the judiciary. A weak executive or an inefficient or even dishonest legislative branch may exist, for a time at least, without serious injury to the perpetuity of our free institutions, but if the people lose faith in the judicial branch, if they become convinced that justice can not be had at the hands of the judges, the next step will be to take the administration of the law into their own hands and do justice according to the rule of the mob, which is anarchy, with which freedom can not coexist.

The Committee on the Judiciary recommend the adoption of the following resolution.

[H. Res. 274.]

*"Resolved, That Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached of high misdemeanor."*

### HOUSE OF REPRESENTATIVES, *April 1, 1904.*

[Congressional Record, volume 38, part 5, page 4109.]

Mr. GILLETT of California. Mr. Speaker, I ask unanimous consent to file and have printed the minority views of the Committee on the Judiciary in the Swayne impeachment proceedings.

The SPEAKER. The gentleman from California asks unanimous consent to present and have printed the views of the minority in the Swayne impeachment proceedings. Is there objection?

Mr. PALMER. Mr. Speaker, within what time? I desire the gentleman to fix the time. I understand the views are printed, and there is no reason why they could not be filed and printed to-day.

Mr. GILLETT of California. I will file them to-day.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.



[House Report 1905, part 2, Fifty-eighth Congress, second session.]

VIEWS OF THE MINORITY.

On the 10th day of December, 1903, the House passed a resolution, a copy of which is as follows:

[H. Res. 86, Fifty-eighth Congress, second session.]

Mr. Lamar, of Florida, submitted the following resolution:

"Whereas the following joint resolution was adopted by the Legislature of the State of Florida:

"SENATE JOINT RESOLUTION in reference to Charles Swayne, judge of the United States court for the northern district of Florida.

*"Be it resolved by the Legislature of the State of Florida:*

"Whereas Charles Swayne, United States district judge of the northern district of Florida, has so conducted himself and his court as to cause the people of the State to doubt his integrity and to believe that his official actions as judge are susceptible to corrupt influences and have been so corruptly influenced;

"Whereas it also appears that the said Charles Swayne is guilty of a violation of section five hundred and fifty-one of the Revised Statutes of the United States in that he does not reside in the district for which he was appointed and of which he is judge, but resides out of the State of Florida and in the State of Delaware or State of Pennsylvania, in open and defiant violation of said statute, and has not resided in the northern district of Florida, for which he was appointed, in ten years, and is constantly absent from said district, only making temporary visits for a pretense of discharging his official duties;

"Whereas the reputation of Charles Swayne as a corrupt judge is very injurious to the interests of the entire State of Florida, and his constant absence from his supposed district causes great sacrifice of their rights and annoyance and expense to litigants in his court;

"Whereas it also appears that the said Charles Swayne is not only a corrupt judge, but that he is ignorant and incompetent and that his judicial opinions do not command the respect or confidence of the people;

"Whereas the administration of the United States bankruptcy act in the court of said Charles Swayne and by his appointed referee has resulted in every instance in the waste of the assets of the alleged bankrupt by being absorbed in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is in effect legalized robbery and a stench in the nostrils of all good people:

*"Be it resolved by the House of Representatives of the State of Florida (the Senate concurring),* That our Senators and Representatives in the United States Congress be, and they are hereby, requested to cause to be instituted in the Congress of the United States proper proceedings for the investigation of the proceedings of the United States circuit and district courts for the northern district of Florida by Charles Swayne as United States judge for the northern district of Florida, and of his acts and doings as such judge, to the end that he may be impeached and removed from such office.

*"Resolved further,* That the secretary of state of the State of Florida be, and is hereby, instructed to certify to each Senator and Representative in the Congress of the United States, under the great seal of the State of Florida, a copy of this resolution and its unanimous adoption by the Legislature of the State of Florida.

"THE STATE OF FLORIDA,

"OFFICE OF THE SECRETARY OF STATE.

"UNITED STATES OF AMERICA, *State of Florida, ss:*

"I, H. Clay Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and exact copy of senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida, passed by the Legislature of Florida, session of nineteen hundred and three, and on file in this office.

"Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this the seventh day of September, anno Domini nineteen hundred and three.

[SEAL.]

"H. CLAY CRAWFORD,  
"Secretary of State."

**"Resolved,** That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the official misconduct of Charles Swayne, judge of the United States district court for the northern district of Florida, and say whether said judge has held terms of his court as required by law, whether he has continuously and persistently absented himself from the said State, and whether his acts and omissions in his office of judge have been such as in any degree to deprive the people of that district of the benefits of the court therein to amount to a denial of justice; whether the said judge has been guilty of corrupt conduct in office, and whether his administration of his office has resulted in injury and wrong to litigants of his court.

**"And in reference to this investigation the said committee is hereby authorized and empowered to send for persons and papers, administer oaths, take testimony, and to employ a clerk and stenographer, if necessary; to send a subcommittee whenever and wherever it may be necessary to take testimony for the use of said committee. And the said subcommittee while so employed shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall serve the processes of said committee and subcommittee and execute its orders, and shall attend the sittings of the same as ordered and directed thereby. And that the expense of such investigation shall be paid out of the contingent fund of the House."**

The author of said resolution, Representative Lamar, was requested by the subcommittee appointed to investigate said charges contained in said resolution, to submit to it a statement setting forth specifically the charges referred to in a general way in said resolution. In compliance with this request, Mr. Lamar presented to said subcommittee the following, to wit:

**"In re Charles Swayne, United States district judge in and for the northern district of Florida: Specifications of matters to be presented for investigation before the investigating committee of the House of Representatives, United States Congress.**

**"Specification 1.—**That the said Charles Swayne, judge of the United States court in and for the northern district of Florida, for ten years, while he has been such judge, was a nonresident of the State of Florida, and resided in the State of Delaware; that he never pretended to reside in Florida until May, 1903; that during said time of his nonresidence, by such nonresidence, he has caused great inconvenience, annoyance, injury, and expense to litigants in his court, not so much by failure to hold terms of court as by failure to be in reach for the disposition of admiralty and chancery matters and other matters arising between terms of court needing disposition.

**"Specification 2.—**That said Charles Swayne, as such judge, appointed one B. C. Tunison as United States commissioner; that it was charged that it was an improper appointment, and that testimony was offered to such effect before said appointment.

**"Specification 3.—**That the said Charles Swayne, as such judge, appointed and maintains one John Thomas Porter as United States commissioner at Marianna, but that said Porter does not reside at Marianna, but at Grand Ridge, 16 miles away, and is never at Marianna or at his office except when notified of an arrest, necessitating people having business with United States commissioner, often at expense and inconvenience, to go to Grand Ridge, and necessitating the holding of prisoners often for a day or two, at their inconvenience and in imprisonment at the expense of the Government until said Porter sees fit to come to Marianna. The said Swayne, although there is great necessity for a commissioner at Marianna, has refused to appoint such.

**"Specification 4.—**That said Swayne, in the administration of his court, has been guilty of great partiality and favoritism to one B. C. Tunison, mentioned in specification No. 2, and a practicing attorney in said court; that so great and well known has this partiality and favoritism become that it has created the general impression that to succeed in that court before the said Swayne it is necessary to retain the said Tunison.

**"Specification 5.—**That said Swayne has been guilty of oppression and tyranny in his office, incorrectly and oppressively and without just cause imprisoning one W. C. O'Neal, one E. T. Davis, and one Simeon Belding, upon feigned, fictitious, and false charges of contempt of said court.

**"Specification 6.—**That said Charles Swayne has willfully, negligently, and corruptly maladministered bankruptcy cases in his court, to the extent that the

assets of bankrupts have, in all or nearly all cases, been squandered and dissipated in paying extraordinary fees and expenses and never paying any dividends to creditors.

*"Specification 7.*—That said Charles Swayne was guilty of oppression and tyranny in his office to one Charles Hoskins upon an alleged contempt, resulting in the suicide of the said Hoskins, and said alleged contempt proceedings being brought for the purpose of breaking down and injuring one W. R. Hoskins, who was charged in said court with involuntary bankruptcy, but who was defending and resisting such charge.

*"Specification 8.*—That said Swayne corruptly purchased a house and lot in the city of Pensacola while the said house and lot was in litigation in his court.

*"Specification 9.*—Ignorance and incompetency to hold said position. Under this specification many illustrations could be given. Among them a case in which he took jurisdiction in admiralty in violation of the treaty between the United States and Sweden and Norway, and in one case, that of *Sweet v. Owl Commercial Company*, in which he charged the jury to exactly and diametrically conflicting theories of law.

*"Specification 11.*—That said Swayne, by reason of his absence from the State, failed to hold the term of court which should have been held at Tallahassee in the fall of the year 1902, during the months of November or December.

*"Specification 12.*—That the said Charles Swayne has been guilty of conduct unbecoming an upright judge in that he has procured as indorsers on his note, for the purpose of borrowing money, attorneys and litigants having cases pending in his court.

*"Specification 13.*—That the said Charles Swayne has been guilty of maladministration in the affairs of the conduct of his office; that he has discharged people convicted of crime in his court. Illustration, case of Alonzo Love, convicted in the year of 1902 of perjury."

The committee, on February 10, 1904, proceeded to Florida to take testimony in support of said charges and examined many witnesses and received a large amount of documentary evidence. After receiving all the evidence and hearing arguments for and against the matters set forth in said specifications your committee met to consider the same, and we all agreed that specifications numbered 2, 3, 6, 7, 8, 9, 11, 12, and 13 were not proven or were not of sufficient gravity to warrant impeachment charges being made.

The majority of the committee were of the opinion that specifications 1, 4, and 5 had been proven; that Judge Swayne also had wrongfully granted a continuance in the case of W. H. Hoskins, a bankrupt, when he desired to go to trial, and refused to hear his witnesses, and that charges of impeachment against him on these grounds should be preferred.

From this I dissented, because I did not believe that the evidence and the law warranted such a conclusion. I looked upon the impeachment of a Federal judge as a very serious matter, the proceeding being a quasi criminal one, and felt that before charges should be preferred that the mind should be satisfied beyond a reasonable doubt and to a moral certainty of the truth of the matters alleged, and that said matters should be of a most serious character, if not a high crime or misdemeanor, of such a willful and intentional misbehavior in office as to amount to a denial of justice to litigants or to cast discredit upon the court and to cause a loss of confidence in the honesty, integrity, and morality of the judge. I could not persuade myself to believe that every error made by the court or every mistake made by him in the discharge of his high duties should be considered sufficient grounds to impeach him. I realize that even the judge of a court is liable to err, both as to law and facts; that his decisions are not always correct; that his judgments are likely to be wrong and oppressive; and that he may exercise his discretion in such a manner as to defeat justice.

If a judge were to be impeached for every error which he committed that inflicted injury upon others Congress would have to remain in constant session and it would be the busiest court in the world. If every judge who has wrongfully found a person guilty of contempt should be cited to appear before the bar of the Senate to answer charges of impeachment the business of that body would be blocked for many a day. How long would the authority of our courts and their decrees be respected if every dissatisfied litigant and every person found guilty of contempt could come to Congress, introduce a resolution with a great flourish of trumpets charging the judge with ignorance, corruption, tyranny, incompetency, and dishonesty, and thereupon the judge be investigated and brought before the bar of the Senate? The dignity of the courts must be maintained and their judgments and decrees must be respected. Therefore

Congress should be very guarded and careful in preferring charges of impeachment. The case, to warrant such charges, should be a very strong one, and before Congress acts there should remain no reasonable doubt that the judge against whom complaint has been made has willfully, knowingly, and intentionally been guilty of serious misbehavior in office, or has been guilty of some high crime or misdemeanor.

With this rule in my mind, I have carefully considered all of the evidence submitted and I can not say that I feel satisfied therefrom that Judge Swayne has misbehaved in office; that he has been guilty of any high crime or misdemeanor; that he has been corrupt, tyrannical, or oppressive; or that his conduct is unbecoming a judge. Neither am I prepared to say that in the matters charged against him by the majority that he has committed any error of law or that he acted in a tyrannical, vindictive, or oppressive manner. Neither do I believe that the evidence in the case warrants the action taken by the majority or is sufficient to cause the House of Representatives to prefer charges of impeachment, and to substantiate this belief I shall now consider the evidence in connection with charges preferred by the majority and the rules of law governing the same.

#### NONRESIDENCE.

First, as to the charge of nonresidence and the inconvenience, annoyance, injury, and expense to litigants in his court by reason thereof:

The evidence shows that in the year 1885 Judge Swayne moved from Pennsylvania to the State of Florida to practice law. In the year 1890 he was appointed district judge of the northern district of Florida, and shortly thereafter he moved to St. Augustine, which was in his district. In June, 1894, the boundaries of the district were changed, and St. Augustine became a part of the southern district of Florida. After this Judge Swayne ceased keeping house in St. Augustine and stored his furniture. He went to Pensacola, Fla., then the largest city in his district, and requested a friend to place his name on the register of voters. This was not done. From 1895 until 1900 Judge Swayne did not own or rent any house in Pensacola, or in his district, but boarded when there in hotels and with private families.

When he went to Pensacola first he directed Mr. Marsh, the clerk of his court, to find him a suitable house. Mr. Marsh testified that he tried to find a house from October, 1895, to October, 1897, but could not get a suitable one. After that he tried to buy a house for him, and sought to purchase the Wright house, the Plagio house, and the Chipley house, but failed to get either. Capt. Northrup testified that when Judge Swayne first came to Pensacola he asked him to get for him a suitable house, and that he took Judge Swayne in his buggy and drove him about to find a house, but failed.

In 1900 he rented a house from Thomas C. Watson & Co., put his household furniture in it, and paid rent and insurance until May, 1903, when he moved into a house purchased by his wife and where he now lives. There is no direct and positive evidence or any evidence at all that from the year 1895 down to May, 1903, Judge Swayne had a home anywhere in the United States excepting in Florida. During a part of this time his family were in Europe. They lived with him for a short period in Pensacola, and his son came and lived with him for a while.

In the resolution it is charged that during this time he resided in Delaware or Pennsylvania, but no evidence of this kind was offered, and it is very evident if Judge Swayne resided in either State and made his home there that it would have been a very easy matter to have established that fact by an abundance of proof. A list of witnesses to prove that he resided in Delaware was furnished the committee, but none were called, and the prosecution rested without offering to call any of them, hence it is reasonable to suppose that it could not be proven that Judge Swayne resided in that State. In fact, he says he left Delaware in 1867 and has never since that date made his home there. Judge Swayne must have a residence somewhere. He established a residence in Florida in 1885, and there is no proof that he ever left that State to make his home elsewhere, or that he intended to do so.

The fact that he went North every summer to spend his vacation, or he with his aged mother, does not prove that he changed his residence, because this is a practice followed by some of the Federal judges in the South. The heat of that country becoming intolerable, they go North during the summer months. In 1900 he moved his furniture into a house in Pensacola rented from Thomas C.



Watson & Co., and for three years paid the rent. He boarded at times in the Escambia Hotel and part of the time in private boarding houses during the time he was in Pensacola. The records of the court show that he averaged about two months each year in his district in the actual trial of cases; that he usually came to Pensacola a day or two before the term of court, and after the term was over would depart. It also appears in evidence that he would return to Pensacola also at times when the court was not in session and between terms.

Now, then, it being charged that he was a nonresident of the district and therefore guilty under the statute of a crime, to wit, a high misdemeanor, it falls upon the prosecution to prove beyond a reasonable doubt that Judge Swayne did not reside within the district, but maintained a residence elsewhere, and I submit that absenting himself any length of time from the district does not alone prove that he is a nonresident of it. The prosecution have not shown where his residence is if it is not in his district. Between 1895 and 1899 Judge Swayne requested parties in Pensacola—W. H. Northrup and Fred Marsh—to find for him a suitable residence, and they testified that no suitable place could be found. He also attempted to purchase a house and also took some steps toward building one. This clearly shows the intent on the part of Judge Swayne to reside in his district, and surely a man's intent always controls on a question of residence. Residence is clearly a question of intent. A man chooses his own residence, and that residence remains until he decides to have another. There is no evidence that Judge Swayne had no intent to establish his residence in Florida and in his district, or that he had any intent to establish it somewhere else. That he paid no taxes or did not vote is not conclusive that he did not reside in his district. Neither are necessary to establish residence.

But it is said he was absent from his district nearly 10 months during each year. But this, as said before, does not prove his residence was not there. Well, it is said, it is a strong circumstance and it proves that he was neglecting his business; that he was not discharging the duties of his office, and from this fact he should be impeached. Let us see. It is true that Judge Swayne was absent from his district, and for months; but it is not true that litigants in his court suffered great or any inconvenience thereby, or that they suffered any loss. Judge Swayne tells us the reason why he was away, and where he was. He was on duty. He was not on a vacation, enjoying the quiet and rest of Guyencourt, Del., or idling away his time in seeking pleasures, but he was on duty most of the time. Under the law the circuit judge of a district may order a district judge to go into other districts and hold court, and also to sit on the circuit court of appeals.

The records in this case show that Judge Pardee and Judge McCormick ordered Judge Swayne to hold court in Alabama, Texas, and Louisiana at different times, and also to sit on the circuit court of appeals, and that he obeyed this order, as it was his duty to do. The certificates of the clerks of different courts in the States just named show when Judge Swayne held court therein, and here follows the record, not giving the States and courts, which can be obtained, but the number of months in which he held court in each year in said States and out of his district commencing with 1895:

"1895.—April, May, November, and December, four months.

"1896.—January, February, March, April, May, June, November, and December, eight months.

"1897.—January, February, March, April, May, June, and July, seven months.

"1898.—January, February, March, April, May, November, and December, seven months.

"1899.—January, February, March, April, May, June, October, and November, eight months.

"1900.—January, May, June, September, October, and December, six months.

"1901.—September.

"1903.—January and February."

Holding court for two months on an average in his own district would make him holding court on an average of about nine months each year. And this, it must be admitted, is a good record for holding court in the Southern States. A large part of the other three months, no doubt, were used by the court in preparing decisions and taking a vacation, unless he decided all of his cases from the bench, which is not likely. The record also shows that not only did he hold court in other districts seven and eight months during the year, but

when the time for holding court in his own district arrived that he went there and dispatched all of the business and kept his docket clear. What does the majority want to impeach him for? Because he was absent from his district under orders; because he only worked 9 and 10 months a year holding court; because he kept his docket clear; because he did not work hard enough? No; certainly these can not be the reasons. Then what are they? If litigants were subjected to "inconvenience, annoyance, injury, and expense," as stated in the specifications, during the time he was absent from his district under orders from Judges Pardee and McCormick, then whose fault was it? And what right have parties to make this the basis for charges of impeachment; and what just reason can this committee give to accept the same as sufficient for preferring charges?

Now, the presumption of law is that Judge Swayne is a resident of his district. As long as a party retains an office which he holds during good behavior he is presumed to continue his domicile in the place where he is to exercise his functions. (*Oakey v. Eastin*, 4 La., 69.) This presumption, as already stated, must be overcome by evidence sufficiently strong to satisfy the mind beyond a reasonable doubt, because under the statute it is made a high misdemeanor not to reside in the district. It can not be overcome by hearsay evidence or by opinions of parties, as sought to be done in this case, but by satisfactory evidence which is competent and relevant. One may be considered as dwelling and having his home in a certain town, though he has no particular choice there as the place of his fixed abode. (2 Me. Repts., 411.) A man is not prevented from obtaining a residence in a place where he goes to permanently make his home by the fact that his wife and children remain in his old home. (1 Bond, 578.)

Neither does absence from a man's place of business for a reasonable time cause him to lose or forfeit his residence there. Of course, the judge's residence must be a legal one as distinguished from a constructive one, and his intent, coupled with his acts, go to make up this residence; that he pays no taxes or does not vote is not evidence sufficient to rebut the presumption of his residence. He may not have any property to pay taxes on, and may not, under some circumstances, care to vote. When a judge goes to a place avowedly for the purpose of making it his home, requests others to try and rent him a suitable house in which to live, endeavors to purchase a suitable place when he learns he can not rent one, contemplates building a home when he can not buy, and finally succeeds in renting a house which he moves into and pays rent thereon for three years, and finally occupies, with his family, a house purchased by his wife, surely must have established the fact that it was his intent in good faith to make his home in that place, and in the absence of a very strong showing it must be conceded that he has established a residence there.

Having established this residence he can not lose it because his duties as a judge required him to hold court in other States within the circuit in which his district is for seven and eight months a year, or by spending a vacation during the hot months of July and August with his aged mother in Delaware. Under all these facts it can not be said that Judge Swayne has violated the statute, and neither has he made any excuses for his nonresidence. He explained his absence from the district, as above stated, and surely this can not be urged as a sufficient ground for his impeachment.

This brings me to the other question stated in the first specification, to wit:

"That during said time of his nonresidence, by such nonresidence he has caused great inconvenience, annoyance, injury, and expense to litigants in his court, not so much by failure to hold terms of courts as by failing to be in reach for the disposition of admiralty and chancery matters, and other matters between terms of court needing disposition."

Of course, if, as has just been stated, he was absent under orders holding court elsewhere, he is to be excused. But what are the facts on this question? J. E. Wolfe, a United States district attorney from 1895 to 1898 and for two years thereafter assistant district attorney, speaking of the loss and inconvenience to litigants caused by the absence of Judge Swayne from the district, says:

"I do not know of any case in which there has been an embarrassment on account of Judge Swayne's absence, and I do not know of any civil proceeding in which litigants were damaged or injured by the absence of the judge."

Mr. Marsh, the clerk of the court, was asked this question (237 of record):

"Q. Do you know of any loss to litigants by any inconvenience resulting by reason of the absence of Judge Swayne?—A. Never a complaint, except in one



instance, and that was the signing of a bill of exceptions \* \* \* when Judge Swayne was holding a term of court in Waco, Tex. I shipped the bill to him and it was signed and returned in time."

W. A. Blount, one of the leading lawyers of Florida, says:

"Whether, as a matter of fact, his absence has resulted in injury or expense. I do not know. I can not say now if any cases have been delayed by his absence."

B. S. Liddon, one of the attorneys for the prosecution, attempted to show that he had a case which he was forced to settle because the judge was absent, and that he had a good defense to it. He said the action was commenced in the summer, and that Judge Swayne would not return until November. The facts are, as finally admitted by the witness when confronted with the record, that the suit was commenced on January 25, 1897, after the court had adjourned on January 9; that it was settled in February, and that the court returned from Texas where he had been ordered to hold court, and held a term of court in Pensacola on March 6.

Another lawyer for the prosecution, Mr. Davis, was put on the stand to testify to inconvenience caused litigants by the judge's absence. He complained that he could not get a bill of exceptions signed readily because the court was absent in Delaware. It appears from the evidence that the delay was caused by the fault of Mr. Davis by not incorporating into the bill certain documentary evidence which the court directed to be included in it, but even then the bill was signed in time and no loss followed to anyone. One Marshall was sworn as a witness to prove that he was forced to settle a bankruptcy case owing to the fact that he could not get a hearing. A short time after the matter was commenced the judge was holding a term of court and Marshall never asked to be heard. I have cited the only three instances shown by the prosecution to substantiate this charge. All amounted to nothing; and it is quite evident, with the great industry of the gentlemen behind this movement, that if there was anything to support the charge they would have found it.

#### CONTEMPT OF O'NEAL.

Second. The majority contend that Judge Swayne should be impeached because he found W. C. O'Neal guilty of contempt and sentenced him to jail; that there is no law authorizing such a judgment, and that the judge acted arbitrarily and oppressively. I can not agree with the majority either as to their construction of the law or as to the facts. They have stated the strongest case possible in this matter against Judge Swayne without inquiring if the record does not contain facts to justify his conduct and to uphold his judgment. The facts are these:

On the 29th day of August, 1902, one Scarritt Moreno filed in the district court for the northern district of Florida his petition in bankruptcy. On September 15, 1902, one Adolph Greenhut was appointed trustee of the estate of said bankrupt. That the said Greenhut, as such trustee, in carrying out the implied orders of the court appointing him and in the discharge of his duties to collect and recover the assets of the bankrupt, commenced an action in equity for the purpose of having a certain deed of property purchased by said bankrupt in the name of his wife and to have certain mortgages thereon declared null and void.

The American National Bank of Pensacola was made a party defendant in this action. W. C. O'Neal was the president of the bank. The action was commenced Saturday afternoon, October 18, 1902. On the following Monday morning the said W. C. O'Neal, when passing the office of the said Greenhut, where were kept the papers of said estate and the business thereof transacted, stopped and said to Greenhut that he wished to speak to him, and Greenhut replied, "I will see you right now," and both gentlemen stepped into Mr. Greenhut's office. What transpired in that office was only seen by Greenhut and O'Neal, and their statements are conflicting, O'Neal testifying that he went in there to reproach Greenhut for commencing the action, that hot words passed between them, and that Greenhut threatened to do him up; that as he started to leave the office he turned around and told Greenhut that he had lied about the Moreno acceptance and that Greenhut then struck him, and he pushed him away; and as he rushed upon him again he drew his pocketknife and cut Greenhut in self-defense.

Greenhut, in his affidavit, says that O'Neal went in his office with him, where he kept and had the custody of the papers, books, etc., relating to and con-

nected with the books of said Moreno, bankrupt; that he asked him, Greenhut, why he had commenced the action against the American National Bank, and made the remark that he would settle with him, or will settle the matter, and that O'Neal then started to walk out, and that Greenhut, not knowing of his purpose, followed. Then when at the doorway O'Neal, without any provocation, turned and wheeled suddenly about with his knife in his hand and struck at his, Greenhut's, throat, cutting him at a point behind the left ear, cutting through a portion of it, thence across the left cheek to the corner of the mouth, stabbed him four times, inflicting serious injuries upon him which prevented him from attending to his duties as a trustee. Seventeen or eighteen days after this assault the said Greenhut filed in Judge Swayne's court an affidavit of which the following is a copy:

"UNITED STATES OF AMERICA,

"*Northern District of Florida, City of Pensacola, ss:*

"Adolph Greenhut, of the city of Pensacola, in the district aforesaid, being duly sworn according to law, on his oath doth depose and say:

"That therefore, to wit, on the 29th day of August, 1902, one Scarritt Moreno filed in the honorable the district court of the United States in and for the northern district of Florida, at Pensacola, his petition to be adjudicated a bankrupt and to obtain the benefits of the acts of Congress of the United States relating to bankruptcy. That thereafter such proceedings were had upon said petition in said United States district court that on September 15, 1902, affiant was duly appointed trustee of the estate of the above-named Scarritt Moreno, bankrupt, which said appointment of deponent as trustee was then and there approved by the said court.

"That thereafter, to wit, on the day and year last aforesaid, affiant accepted said appointment and filed his bond as such trustee, which said bond was duly approved by E. K. Nichols, Esq., referee in bankruptcy, and at the same time deponent took the oath of office as required by law, and thereupon he became charged with the duties and clothed with the authority appertaining to a trustee in bankruptcy under the laws of the United States, and from thence hitherto has occupied and is now occupying said trusteeship, amenable to and subject to the orders of the said the honorable district court of the United States in and for the northern district of Florida.

"That affiant was, by his counsel, advised that it was his duty as trustee of the estate of said Scarritt Moreno as aforesaid to institute a certain suit or action in equity for the purpose of having certain property purchased by the said Scarritt Moreno, bankrupt, the title to which was taken by the said Scarritt Moreno in the name of his wife, brought into the said United States district court as a part of the estate of said bankrupt, to be there administered as required by law, and for the further purpose of having certain mortgages on said property decreed and declared to be null, void, and of no effect. That thereupon, in the afternoon of Saturday, the 18th day of October, 1902, through his counsel, he, as trustee as aforesaid, and in the performance of his duty as aforesaid as an officer of the said United States district court, caused to be filed in the circuit court of Escambia County, State of Florida, his certain bill of complaint, therein and thereby among other things asking the relief above referred to.

"That by the advice of his counsel, Scarritt Moreno, Susie R. Moreno, his wife, the American National Bank of Pensacola, the Citizen's National Bank of Pensacola, and others, were made parties defendant in and to said bill of complaint, and that upon the filing of the said bill of complaint suit was commenced against the defendants named in said bill of complaint. That all of the proceedings above referred to were taken and had by affiant as an officer of the district court of the United States in and for the northern district of Florida and in the due, proper, and faithful performance of his duty as such officer, and were necessarily had and taken under the law and his oath of office.

"That on Monday, the 20th day of October, A. D. 1902, between the hours of 9 and 10 o'clock a. m., affiant was standing in the door of the office of the store owned and conducted by him, situated at No. — East Government Street, in the city of Pensacola aforesaid, which said office was occupied by deponent, among other things, for the purpose of performing the duties devolving upon him as trustee as aforesaid, and in which said office this deponent kept and had the custody of the papers, books, etc., relating to and connected with the estate of said Scarritt Moreno, bankrupt, in deponent's hands as trustee as aforesaid; that at the said time deponent was engaged in conversation with one Alex Lischkoff, when one W. C. O'Neal, who was at the said time president of

said American National Bank of Pensacola, one of the defendants in the action or suit heretofore referred to, approached to where affiant was standing and conversing as aforesaid, and stated to affiant that as soon as he, affiant, was at liberty, he, said O'Neal, desired to speak to him. Thereupon affiant stated, in effect, that said O'Neal could speak to him then, and affiant entered his said office and stood alongside of a standing desk about 5 feet from the door of said office.

"Said O'Neal followed affiant into said office and stood opposite to affiant, and distant only a few feet. That thereupon said O'Neal in effect asked this affiant why he, affiant, had brought the name of his, the American National Bank, into the Moreno suit (meaning thereby the suit above referred to, brought by affiant, as trustee, against Scarritt Moreno and others); that affiant replied that he, O'Neal, could see his, affiant's, attorneys in relation thereto; that said O'Neal made some remark to the effect that he would not do so, and stated to affiant that he, affiant, was no gentleman; that affiant thereupon said that he, affiant, was as much of a gentleman as he, the said O'Neal; that thereupon said O'Neal said we'll settle the matter, and turned about as if he intended to leave the premises of deponent, walking toward the door of said office and out upon the sidewalk; that affiant had no thought, idea, or suspicion that said O'Neal intended any personal violence toward him, and quietly started forward from where he was so standing as aforesaid toward the door of said office leading into the street.

"That affiant barely reached the doorway of said office when said O'Neal, without any provocation, without any notice to deponent of his murderous intention, turned and wheeled suddenly about with his knife in his hand, and, with intent to kill and murder deponent, struck at his, deponent's, throat with said knife, and cut deponent at a point behind the left ear, cutting through the lower portion of said left ear, then across the left cheek, ending at left corner of mouth; and immediately thereafter said O'Neal cut and stabbed deponent four further times: (1) On left side over lower ribs, (2) upon left hip, (3) on left elbow, and (4) on right hand. That the cuts, wounds, and stabs so inflicted by said O'Neal upon deponent were of a serious and dangerous character, and from said time to the present deponent has been unable to attend to and perform his duties as trustee as aforesaid, and has been confined to his home, except for a few hours on two or three different days; and has ever since been and is now under the care and treatment of a physician who is attending to said wounds.

"That said assault and attempt to murder was committed by said O'Neal as aforesaid solely because and for the reason that affiant, as an officer of the United States district court in and for the northern district of Florida, had instituted the suit above set forth against the said American National Bank and others, and to interfere with and prevent deponent from executing and performing his duties as such officer of said court; and the said O'Neal did, by the said murderous assault, interfere with the management of the said trust by deponent as an officer of the said court, and did for a long period of time, to wit, from the said 20th day of October, 1902, up to the present time, by reason of the injuries inflicted by him upon deponent as aforesaid, prevent and deter deponent from performing the duties incumbent upon him, deponent, as such officer, and did thereby interfere with the management by deponent as such officer of the estate of the said Scarritt Moreno, bankrupt.

"A. GREENHUT.

"Sworn to and subscribed before me this 7th day of November, A. D. 1902.

"E. K. NICHOLS, *Referee in Bankruptcy.*"

To this affidavit O'Neal filed an answer, a copy of which is as follows:

"And thereafter, and in the said day, to wit, on the 22d day of November, A. D. 1902, the following answer was filed in the said cause by the respondent therein, to wit:

"In United States district court, northern district of Florida, at Pensacola. In re rule upon W. C. O'Neal to show cause why he should not be punished for contempt upon the statement set forth in the rule and the affidavit of A. Greenhut, thereto attached.

"Respondent, for answer to the rule and to the said affidavit, says:

"1. That he knows in part and presumes in part that the allegations of the first paragraph of the said affidavit are true.

"2. That he knows in part and presumes in part that the allegations of the second paragraph of the said affidavit are true.

"3. That the statements in the third paragraph of said affidavit are in part true and in part untrue, and that the following statement of the facts leading up to, accompanying, and surrounding the affray between himself and the said Greenhut on October 20, 1902 are true:

"That the said Greenhut had been, from the organization of the American National Bank, of Pensacola, in October, 1900, a stockholder and director thereof; that while he was such stockholder and director the said bank received from the said Scarritt Moreno a certain mortgage for the sum of \$13,000 to secure certain indebtedness due or to become due by the said Moreno to the said bank; that the said transaction was an honest and bona fide transaction, and that the said Scarritt Moreno was and became indebted to the said bank in a large sum of money secured by the said mortgage; that the said Greenhut was cognizant of the whole of said transaction and knew of its bona fides and honesty, as he did of the subsequent bona fide transfer thereof to Alex McGowan, S. J. Foshee, and H. L. Covington for a large consideration paid by them to the said bank, and that the bill filed by the said Greenhut as trustee as aforesaid, was filed to declare the said mortgage and transfer null and void, although the said Greenhut knew them to have been entirely honest, straight, and valid transactions.

"That prior to the said 20th of October said A. Greenhut become indorser upon certain negotiable paper of the said Scarritt Moreno to the said bank to an amount of about \$1,500; that the said Greenhut refused to make good his said indorsement or to pay to the said bank the money due upon said paper at its maturity or thereafter, and before the said 20th day of October the said bank had been compelled to sue him in the circuit court of Escambia County, Fla., upon said paper, and that in the said suit the said Greenhut interposed a defense which this respondent believed and believes to be untrue and known to the said Greenhut to be untrue.

"That on the morning of the 20th of October, 1902, respondent was proceeding from his residence to his office in the said bank, in the direct and usual path pursued by him, and he saw the said Greenhut standing at the door of his said store office upon the said path of respondent, and it suddenly occurred to respondent to reproach the said Greenhut with having brought the suit mentioned in his affidavit against the said bank, when he, the said Greenhut, knew as aforesaid that there was no foundation therefor; and thereupon the respondent stated to the said Greenhut that he wished to speak to him as soon as he was at liberty, he then being engaged in a conversation with one A. Lischkoff. The said Greenhut answered that respondent could speak to him then, and both he and respondent stepped to the rear of the said Greenhut's office, when the respondent reproached the said Greenhut with his attitude toward the bank, of which he had been a stockholder and director, both in his refusal to pay the negotiable paper hereinbefore mentioned, and in the bringing of an unfounded suit against it; the conversation, however, concerning chiefly the bringing of the said suit against the said bank. Hot words passed between the said respondent and said Greenhut, during which the said Greenhut said that he would 'do respondent up,' to which respondent answered that he did not come to have a disturbance and would not fight in his office except in self-defense, but that if he had to fight he would do so if the said Greenhut would come out upon the street.

"When the respondent turned to leave the office and when he had nearly reached the door, he turned and said to the said Greenhut, 'Well, you know how you lied about the Moreno acceptance, for you said that you would pay it.' the Moreno acceptance being the negotiable paper hereinbefore mentioned. As respondent turned, saying this, he noticed that the said Greenhut was following him, and as he said it the said Greenhut, who was short, stout, heavily built, and apparently much more muscular than respondent, struck the respondent, who is thin and feeble, and forced him against the railing in the said office. The respondent shoved the said Greenhut a little away from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocketknife and opened it, in order to protect himself, and upon said Greenhut rushing upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

"That it is not true that the respondent at any time said to the said Greenhut that he, respondent, would settle the matter, but the facts are as hereinbefore stated; that respondent does not know how many or where located were all the wounds inflicted with said knife and hence he is unable to admit or deny the



allegations of the said affidavit relating thereto; that it is not true that the use of the said knife was with the intent to kill and murder the said Greenhut or to do him any bodily harm, but respondent avers that it was entirely from the instinctive desire of respondent to defend himself from the attack of a larger and more powerful man.

"That it is not true that the assault charged in the said affidavit was committed by the respondent solely because and for the reason that the said Greenhut had instituted the suit aforesaid against the said American National Bank, or to interfere with and prevent him, the said Greenhut, from exercising and performing his duties as an officer of this court; that in truth the respondent never contemplated at any time any interference with the said Greenhut as trustee as aforesaid, or contemplated any affray with the said Greenhut, or any personal conflict with him until he saw the threatening attitude of the said Greenhut toward him, the respondent, as hereinbefore set forth, and that so far as respondent can determine from the actions of the said Greenhut, who was the aggressor as aforesaid, the cause of the said affray was the remark of respondent to the said Greenhut concerning the said Greenhut's action in repudiating his obligation to pay the said acceptance.

"And respondent disclaims the existence on his part at any time of any intent to interfere with, prevent, impede, or delay the said Greenhut in the prosecution of the said suit against the said bank, or to interfere with or impede or prevent him in anywise in the execution or performance of any of his duties as such trustee, and specially disclaim any intent to do any act which might savor in the slightest degree of contempt of this honorable court.

"W. C. O'NEAL.

"W. C. O'Neal, being duly sworn, says that he has read the foregoing answer and that the statements therein made are true.

"W. C. O'NEAL.

"Sworn and subscribed before me this 18th day of November, A. D. 1902.

[SEAL.]

"JNO. PFEIFFER, *Notary Public.*"

"On the 9th day of December the matter came on for trial, and the court, after hearing all of the evidence and all of the witnesses, rendered the following judgment:

"And afterwards, to wit, on the 9th day of December, A. D. 1902, the following proceedings were had in open court, to wit:

"In the matter of the rule upon W. C. O'Neal to show cause why he should not be punished for contempt of this court as to the matters and things set forth in the affidavit of Adolph Greenhut.

"This cause coming on to be heard at this time on the affidavit of Adolph Greenhut, in the matter of the bankruptcy proceedings in the estate of Scarritt Moreno, and upon the rule to show cause why he should not be punished for contempt of this court issued thereon by this court against W. C. O'Neal, and upon the answer of the said respondent, W. C. O'Neal, to the said rule and affidavit, and the court having heard the testimony and the witnesses for the prosecution and for the respondent, and after argument of counsel and consideration by the court, and the court being advised in the premises, the court doth find as follows:

"That the affidavit of Adolph Greenhut, upon which this rule was granted, is true, and that the respondent is guilty of the acts and things set forth therein, in the manner and form therein alleged, and that the same constitute and are a substantial contempt of this court, and it is therefore

"Ordered, adjudged, and directed that the said respondent, W. C. O'Neal, be taken hence to the county jail of Escambia County, at Pensacola, in the State of Florida, and there confined for and during the period of sixty days, and that he stand committed until the term of his sentence be complied with or until he be discharged by due process of law.

"And the said respondent, W. C. O'Neal, at this time having sued out his writ of error to the Supreme Court of the United States, and made and entered into a bond and undertaking, conditioned as required by law, and duly approved by this court, it is therefore ordered that the said writ of error be and operate as a supersedeas to the judgment heretofore rendered in this cause."

There is no evidence that Judge Swayne acted arbitrarily in the matter, that he was oppressive, or that he wrongfully and willfully in defiance of law tried

the action and pronounced judgment. The majority of the committee contend that there is no law to warrant the decision of the court; that no contempt had been committed; that the judge was in error; and for these reasons and because he made a mistake in the law, because he rendered an erroneous judgment, he should be impeached.

The judge certainly had the right to pass on the credibility of the witnesses and certainly had the right to believe Greenhut's statement in preference to that of O'Neal's, and if the evidence supported the allegations of Greenhut's affidavit—and the judge found that it did—then he had the right under the law, in my judgment, to find O'Neal guilty of contempt.

A trustee in bankruptcy, under the bankrupt act, is made an officer of the court. It is his duty, under an order of the court appointing him, to commence any actions necessary to recover property belonging to the bankrupt, and when he commenced such an action he is acting as an officer of the court and under its orders, or he would have no right to commence and prosecute the action at all. And any interference with him, either in the commencement of the action or in its prosecution, is a resistance by a party to a lawful order of the court and clearly falls within the express language and meaning of section 725 of the Revised Statutes. The action of O'Neal was not only to reproach Greenhut, but to frighten and terrorize him and to interfere with him in the lawful discharge of his duties as trustee and as an officer of the court.

Is it possible that the court may direct its trustees and officers to commence an action to recover assets to be distributed by the court to creditors and can not punish for contempt a party who stands in the street blocks away from the courthouse and by force of threats intimidates the trustee so that he, through fear of personal violence, dare not commence his action? Surely such can not be the law, and such is not the law. What are the decisions on this question?

In the case of the *United States v. Anonymous*, reported in volume 21, Federal Reporter page 761, it is held that "it is a contempt of court to interrupt and violently break up the examination of a witness before an examiner by persisting in the claim to dictate, prompt, and control the answers of the witness. It is also a contempt to insult the examiner by use of violent language to him after he has left the office and is upon the street. Nothing in the Revised Statutes, section 725, has taken away the power of the court to punish such contempts."

The court, on page 771, uses this very strong language, which applies with great force to the O'Neal case. It says:

"The privilege of protection to all engaged in and about the business of the court from all manner of obstruction to that business from violence, insult, threats, and disturbance of every character is a very high one, and extends to protect the persons engaged from arrests in civil suits, etc. It arises out of the authority and dignity of the court and may be enforced by a writ of protection, as well as by punishing the offender for contempt."

The court further on says if the misbehavior was not in the presence of the court, or so near thereto as to obstruct the administration of justice, it was nevertheless the disobedience or resistance by a party to a lawful order, decree, or command of the court.

In the case of *In re Higgins*, reported in volume 27, Federal Reporter, page 443, it is held that receivers are sworn officers of the court, and their agents and servants in operating the railways are pro hac vice the officers of the court, and that it is well settled that who unlawfully interferes with property in the possession of the court is guilty of contempt of that court, and it is equally well settled that whoever unlawfully interferes with officers and agents of the court in the full and complete possession and management of property in the custody of the court is guilty of a contempt of the court, and it is immaterial whether this unlawful interference comes in the way of actual violence or by intimidation and threats. To the same effect are the cases of *In re Acker* (66 Fed. Rep., 290) and *In re Tyler* (149 U. S., 181).

One of the most interesting decisions on this question of the power of the court to punish for contempt is by Judge Jones, of Alabama, and reported in volume 120, Federal Reporter, page 130, ex parte McLeod. This case discusses the causes that led up to the enactment of section 725, Revised Statutes. The court holds that—

"An assault upon a United States commissioner because of past discharge of duty is a contempt of the authority of the court, whose officer the commissioner is, in the administration of criminal laws, although no proceeding against



the offender was then pending and the commissioner at the time was not in the performance of any duty."

This must be so. The court must have its officers to enforce and carry out its decrees, to enforce and protect the rights of litigants, to preserve peace and good order, and to assist it in the performance of those duties which are imposed upon it by law. The judge himself is only an officer of the court, and, indeed, the court would be weak that had no power to punish a party for contempt who interfered with one of its officers for the purpose of preventing him from discharging his duty as an officer of the court, as trustees, or receivers. If trustees, commissioners, and other officers of the court are to be deterred in the performance of their duties by reason of violence or threats, if they may be assaulted and stabbed because they are carrying out the mandates of the law, then we will have no law, no order, no security, no protection of person or property.

It is necessary for the peace and good order of the law and of society that a trustee in bankruptcy may, without fear, commence actions in the courts to recover property which belongs to creditors. It is also necessary that after the action has been commenced that he shall not be terrorized to the extent that he dare not prosecute further. His duties are, among other things, to collect and reduce to money the property of the estate for which he is a trustee, under the direction of the court, and there is vested in him title to all of the property belonging to the bankrupt, including property transferred by the bankrupt in fraud of creditors. In trying to declare the deed of Moreno to his wife and the mortgages therein as void in the suit which he commenced, Greenhut was "acting, under the direction of the court." or, in other words, under its order, as its officer; and when Mr. O'Neal went into his office to reproach him for commencing this suit and used violence upon him he was resisting and interfering with an officer of the court in the performance of an order of the court, and was guilty of a contempt. Being guilty of a contempt, Judge Swayne's duty was to punish him therefor, and he would not have been mindful of the peace and good order of his court and the due administration of justice therein if he had not done so.

But the majority contend that "the answer of O'Neal purged the contempt, and it was error to punish him for it." and therefore the judge should be impeached. We can not agree to this for two reasons: First, the answer does not purge the contempt, and, second, growing out of an equity proceeding, the court had the right to inquire into and pass upon the merits.

In proceedings for criminal contempt the answer of the respondent in so far as it contains statements of fact must be taken as true. If false, the Government is remitted to a prosecution for perjury. This is the common-law rule. But the answer must be credible and consistent with itself, and if the respondent states facts which are inconsistent with his avowed purpose and intent the court will be at liberty to draw its own inferences from the facts stated. (In re May, 1 Fed., 737; in re Crossley, 6 Term R.; ex parte Nowlan, 6 Term R.; U. S. v. Sweeny, 95 Fed., 447; in re Debs, 64 Fed., 724.)

"Disclaimer of intentional disrespect or design to embarrass the due administration of justice is, as a rule, no excuse, especially where the facts constituting the contempt are admitted or where a contempt is clearly apparent from the circumstances surrounding the commission of the act." (Cyclopedia of L. & P., vol. 9, 25.)

Courts may make inquiry as to the truth of the facts notwithstanding the answer denies fully the allegations of the affidavit, statement, or petition and disclaims any intention to do any act in contempt of the court. (Territory v. Murray, 7 Montana, 251; Crow v. State, 24 Tex., 12; State v. Harper Bridge Co., 16 W. Va., 864; U. S. v. Debs, 64 Fed., 724; In re Snyder 103 N. Y., 178; 48 Conn., 175; 19 Fed., 678.)

The law as above stated is clearly applicable to the answer filed by O'Neal.

He admits that he knew that Greenhut had been appointed trustee. He admits that he knew that Greenhut as such trustee had commenced an action to recover assets which it was alleged belonged to the bankrupt and which he was endeavoring to cover up by fraud. He admits that the bank of which he was president was a party defendant in this action, and he admits that "it suddenly occurred to him to reproach the said Greenhut with having brought the suit against the said bank." He also admits that when he entered Greenhut's office he reproached the said Greenhut for bringing an unfounded suit against the bank; "the conversation, however, concerning chiefly the bringing

of the said suit against the said bank," and that hot words passed between them and that he invited Greenhut into the street to fight. He says, "that it is not true that the assault charged in the said affidavit was committed by respondent solely because and for the reason that the said Greenhut had instituted the suit against the said American National Bank, or to interfere with or prevent him, the said Greenhut, from exercising and performing his duties as an officer of this court."

He says that the assault was not made solely for that reason, but he does not deny that that was one of the reasons, and thereby admits that it was.

Having made an affidavit in which he admits so much, the court could well find that it was inconsistent with his claim that he had no intent to commit any contempt or to interfere with Greenhut in discharging his duties as trustee. In fact, nowhere does it appear that O'Neal ever asked to be dismissed, because he had fully purged himself of contempt by his answer.

But the action commenced by Greenhut, being an equitable action, and his duties as trustee being more as an officer in equity than one at law, the court had the right to inquire into the merits even if O'Neal filed an affidavit fully and completely purging himself of the contempt charged, a different rule obtaining in equity than at law. (*Buck v. Buck*, 60 Ill., 105; 114 Mass., 290; 37 N. H., 450; 48 Conn., 175.)

When O'Neal was found guilty of contempt he took a writ of error to the Supreme Court of the United States and the cause was dismissed. Then he sued out a writ of habeas corpus before Judge Pardee, and on the 10th of November last the court, Judges McCormick and Shelby concurring, dismissed the writ. This decision is reported in volume 125, Federal Reporter, page 967.

The court says:

"The charge of contempt against the relator is based upon the fact that he unlawfully assaulted and resisted an officer of the district court in the execution of orders of the court and in the performance of the duties of his office. Under such orders, and in that respect, it would seem to be immaterial whether at the time of the resistance the court was actually in session with a judge present in the district, or whether the place of resistance was 40 or 400 feet from the actual place where the court was actually held, so long as it was not in the actual presence of the court, nor so near thereto as to embarrass the administration of justice.

"Under the bankruptcy act of 1889, section 2, the district courts of the United States, sitting in bankruptcy are continuously open; and, under section 33, and others of the same act, a trustee in bankruptcy is an officer of the court. The question before the district court in the contempt proceedings was whether or not an assault upon an officer of the court, to wit, a trustee in bankruptcy for an account of and in resistance of the performance of the duties of such trustee, had been committed by the relator; and, if so, was it under the facts proven a contempt of the court whose officer the trustee was. Unquestionably the district court had jurisdiction summarily to try and determine these questions, and having such jurisdiction, said court was fully authorized to hear and decide and adjudge upon the merits."

If O'Neal was guilty of the matters charged against him, and there was sufficient proof of that fact as shown both by Greenhut's affidavit and his own, then there is no doubt that he was guilty of contempt.

Judge Swayne having been fearless enough on the proof of these facts to find a banker and an influential citizen guilty of contempt, the majority in their report say, on page 20, that—

"Judge Swayne's action was, to say the least, arbitrary, unjust, and unlawful. It could have proceeded only from either willful disregard of the law or from ignorance of its provision."

If the court has no power to punish those for contempt who beat, assault, and intimidate its officers when discharging their duty, then what protection have they, and how will the law be enforced? If a sheriff can not serve a process without being beaten, if a clerk can not file a paper without being threatened, if a juror can not proceed to hear a case without interference, and if a trustee can not commence an action without being stabbed, and neither have any right to appeal to the court for protection, then men will not be found who will discharge their duties; and if a judge dare to punish for contempt for the doing of any of these things he lays himself subject to impeachment and to be charged with tyranny, oppression, and ignorance, and his acts characterized as being "arbitrary, unjust, and unlawful"

But the majority in their report in this matter give their whole case away. They say, on pages 20 and 21—

“O’Neal did not assault Greenhut because Greenhut had sued the bank, but because he had sued the bank knowing that his contention was false.”

Here is an admission that O’Neal did assault the trustee, and that the assault grew out of the action that Greenhut commenced against O’Neal’s bank, but the assault is sought to be justified because O’Neal claimed that the suit was an unfounded one and Greenhut knew it. The question of whether or not a suit is well founded is always a question for the court before whom the action is pending. If a defendant has the right to walk into the office of a receiver, trustee, executor, or administrator, and stab him and try to cut his throat, and justify his action by claiming that a suit brought against him by such officer is unfounded, then how can the court protect its officers in the discharge of their duties? Happily no such right as this exists under the laws of this or any other civilized nation.

In punishing O’Neal Judge Swayne did his duty. Out of this trouble grew this impeachment proceeding. O’Neal at once started in to get even on the court and the evidence shows that he employed lawyers to go to Tallahassee and lobby through the resolution passed by the Legislature of the State of Florida. The two most prominent lawyers now prosecuting this matter, Mr. Liddon and Mr. Laney, admit that they were employed by O’Neal to lobby this resolution through.

There is considerable feeling of prejudice and malice in this proceeding, and it is well to be careful and not be influenced by it to the end that no mistakes are made and no injustice done.

#### BELDEN AND DAVIS.

Third. The majority are of the opinion that Judge Swayne should be impeached because he found one Davis and one Belden guilty of contempt. With this we can not agree; neither can we agree with the statement of facts set forth in Mr. Palmer’s report, as important matters are omitted which put a very different phase to the transaction.

The trouble grew out of the following facts: In February, 1901, Florida McGuire commenced an action in Judge Swayne’s court to recover about 200 acres of land, known as the Rivas tract. This tract of land is described as one body, though it is divided into lots and blocks and owned by a number of people. On this tract is a block known as block 91 of the new city; but there is nothing in the said description of the tract of land that would show this fact. In the summer of 1901 Judge Swayne’s wife was negotiating with a real estate firm for the purchase of several pieces of land, one of which was said block 91. This block was owned by a Mr. Edgar, who lived in New York, and upon whom service of summons had never been made in the said Florida McGuire suit. Mr. Edgar made a deed in favor of Mrs. Swayne and sent it to Thomas C. Watson & Co., the agents above named. Mr. Hooten in July, 1901, wrote to Judge Swayne that he had received the deed, but it was not a warranty deed, as Edgar was afraid of the Caro claim. To this letter Judge Swayne replied as follows:

“Gentlemen, you may omit block 91 and send papers for the others along and oblige.”

This ended the negotiations of Judge Swayne’s wife to purchase said block. Afterwards it was sold to the Pensacola Improvement Co., and neither Judge Swayne nor his wife ever owned it or were ever in possession of it. Before the commencement of the November term of court the attorneys for the plaintiff in the Florida McGuire suit requested Judge Swayne, by letter, to recuse himself, as he owned an interest in the property in dispute. The judge did not answer this letter. On November the 5th, when court opened, the judge brought this matter up in the presence of the attorneys for plaintiff, Florida McGuire, and stated that he had received a letter from them asking him to recuse himself because he had purchased a piece of land which was a part of the land embraced in the Florida McGuire case. (Testimony of W. A. Blount; Mr. Palmer states they had no notice.)

“The judge stated he had not purchased any such land; that his wife, through him, had negotiated for the purchase of a block of this tract, but when the deed was sent to close the trade he saw it was a quitclaim, and he asked why a warranty deed had not been given. The reply by Watson & Co., Edgar’s agents, was the reason a warranty deed was not given was because this land

was in controversy in this suit, and he did not care to give a warranty. Judge Swayne, learning this, caused the deed to be returned, and as no formal demand had been made of him to recuse himself, he would try the case."

The foregoing is the statement of W. A. Blount, Florida's foremost attorney, who was in the court at that time. The criminal calendar was taken up first, and the court informed the parties that he would take up the civil docket right after the criminal calendar. The only case on the civil docket was the case of Florida McGuire. A jury was in attendance. During the week the attorneys for Florida McGuire informed W. A. Blount, attorney for defendants, that they were ready. All of their witnesses were in Pensacola and easy to reach. Saturday morning it was apparent that the last criminal case would be finished that day, and Mr. Blount took out a subpoena for his witnesses. Again I quote from the testimony of Mr. Blount:

"The first we knew that they would not be ready was the application by Judge Paquet for a postponement of the case to Thursday. I objected very strenuously. I had tried the same issues 11 times. I called the court's attention to the fact that my knowledge of the witnesses and the issues led me to believe that 90 per cent of the witnesses were in half-hour call of the court room; there was no reason for delay. The court took that view, would not call it then, but would call it Monday, unless there was an application for a continuance in accordance with the rule."

That night, Saturday, after the court had refused to postpone the case, Davis Belden, and Paquet, attorneys for the plaintiff, Florida McGuire, met together in a store of one of their clients, and there discussed the question of suing Judge Swayne, and decided to do so. Belden admits he was present at this meeting, though the majority report says, page 8, "The papers were taken to Simeon Belden, into his hotel, where he was ill, and he signed them." The following are the facts, as sworn to by Belden:

"A. I was at the Park Hotel a short time, and they sent for me to come down to Judge Paquet.

"Q. Where was he?—A. At Mr. Pryor's store, I think; I went there and signed the papers and left. It was a suit against Judge Swayne for the recovery of that property."

The suit was commenced after 8 o'clock at night in the Circuit Court of Escambia County, Fla., after the clerk had gone home, and the statement was made to him that the writ must be served that night at all hazards. After the writ was issued the sheriff was hunted up and instructed to serve Judge Swayne with it that evening. These attorneys also, in carrying out their scheme, wrote an article for the paper, to be published next morning—Sunday—stating that the suit had been brought and the object of it, and procured its publication.

The majority in their report say that they did not procure its publication, but the evidence is positive that they did. The suit was one in ejectment to recover from Judge Swayne block 91 and mesne profits amounting to \$1,000, and all three of these parties well knew that Judge Swayne had never owned the land and had never been in the possession of it. Judge Belden claimed that the land was Lydia C. Swayne's, and Mr. Davis, in his petition for a writ of habeas corpus, stated the same fact. It was open, unimproved land. The action was not commenced in good faith with the intention of prosecuting it, and nothing more was ever done with it. If the parties had been acting in good faith they certainly would have sued Mrs. Swayne, whom they claimed to be the owner of the land, and not Judge Swayne, who had never negotiated for it. When forced to state what caused them to act in this great haste, they gave as an excuse that they were afraid that Judge Swayne would leave before they could get service upon him. Monday forenoon Judge Blount talked the matter over with Judge Swayne, and he, acting on his own suggestion, prepared the papers upon which Davis and Belden were found guilty of contempt.

At the trial Judge Swayne said, so states Mr. Blount in his evidence, that he had no doubt that the people in the city had a right to sue him, but the circumstances showed it to be an attempt to influence a United States judge in his duty by putting him where he would have to declare himself disqualified, and knew he had so announced, and had no reason to believe so. Before Davis and Belden were cited for contempt they dismissed the Florida McGuire suit. They probably heard contempt proceedings were being started. They claim now that Saturday evening they had decided to dismiss the case pending before Judge Swayne. But if this is a material fact in the case, it could only have been



such by calling Judge Swayne's attention to it at the time of the contempt proceedings, which they did not do. As far as the court knew, no intention of that kind ever existed. It was not sworn to, was not put in their answer, and was mentioned in no way when it ought to have been, and it seems rather late in the day to make that claim now.

Mr. Davis claims that he was not retained in the Florida McGuire suit until Sunday, after the suit against Judge Swayne had been commenced, and the majority, in their report, say that "E. T. Davis was not of counsel in the case and had no connection with it up to the time that court adjourned on Saturday, November 9, at 6 o'clock." We believe that Davis was retained and was connected with the suit before Judge Swayne was sued, and had been for some time, and the evidence clearly establishes that fact beyond all doubt. J. C. Keyser was interested in the suit on behalf of plaintiff; in fact, he was one of the plaintiffs, though his name did not appear of record. He said, when asked what attorney asked Judge Swayne to recuse himself, "I think Mr. Davis and Gen. Belden."

On page 250, Mr. Marsh, the clerk of the court, says:

"I don't think any præcipes had been gotten out. I had told Mr. Davis I would wait as late as he desired to get them out. He did not seek any præcipes.

"Q. Was Mr. Davis in the case, then, that Saturday afternoon?—A. Yes."

On page 278 Mr. Belden says:

"After receiving the telegram from Judge Pardee, Mr. Davis was to make up the record in the case, so if there was error we could appeal it—take it up by writ of error. We intended to proceed, but the judge calling the case Saturday evening, 9th of November, refusing to allow us time to get our witnesses before the court, we were deprived of the facilities of making up such a record as Judge Pardee contemplated we should make, and we had to discontinue it."

Here is a positive statement by Mr. Belden that Davis was in the case before Swayne was sued.

Mr. Paquet says, page 423, that—

"Davis was brought into the suit on Saturday, November 9, before Judge Swayne was sued; that he was one of the advising counsel of the clients; that he was associated, and asked if I had any objections; during the week he was in court very frequently advising with some of the plaintiffs."

Davis also admits in his petition for a writ of habeas corpus that he was an attorney for plaintiffs, a copy of which writ is as follows:

"United States circuit court, fifth judicial circuit, Ex parte Elza T. Davis, habeas corpus.

"The relator in this case, Elza T. Davis, comes into court and excepts to the consideration of what is filed herein as a certificate of Charles Swayne, judge, without date, because it contains charges and statements amounting to charges of contempt against this defendant not contained in motion and order charging contempt, and which statements and charges he has never been ordered to answer or in any way given a chance to reply to.

"Should this exception be overruled, then defendant, with permission of court first had and for which he prays, says:

"That on the 5th day of November, 1901, in open court of the United States circuit court of the northern district of Florida, Charles Swayne, United States district judge presiding, in answer to a letter from this defendant and Louis P. Paquet, of counsel for Mrs. Florida McGuire, of date October 4, 1901, to said judge at Guyencourt, in the State of Delaware, requesting him to recuse himself on the trial of the suit of Mrs. Florida McGuire v. Pensacola City Company et al., among other reasons, because of his interest in the said suit pending before him, refused to recuse himself, and went on to state from the bench in open court that a relative of his had purchased a part of the said land in litigation before him in said suit of Mrs. Florida McGuire, that the deeds had been sent north to him (the judge), and that he had returned them.

"Second. In the second paragraph of the judge's certificate he mentions the desire of his wife to purchase block 91, being the block that he is sued for in the State court, but he has not stated as fully as he did in open court on the 11th of this month the facts in reference to said purchase. On said date, 11th November, 1901, said judge stated in the hearing of all present, this relator and Simeon Belden, also counsel for Mrs. McGuire, being present, that the relative referred to in his statement from the bench in open court on the 5th of November 'is his wife'; that she purchased said block of ground on the Rivas



tract with her own money; that finding that it was on the 'Rivas' tract in litigation before him he returned the deed. At no time has he ever stated or furnished us any proof that said sale had been resolved at his request or by his wife's vendor, or that his wife, who purchased the same with her own money, desired it canceled.

"Third. In paragraph 5 in said judge's certificate the facts in reference to trial of suit of Florida McGuire v. Pensacola City Company et al. the material facts are suppressed. They are as follows: The criminal term of said court ended Saturday, late in the evening of November 9, when said judge announced that he would take up the trial of the McGuire case the following Monday at 10 o'clock a. m. The case had never been fixed for a day to which we could have our witnesses summoned, and we therefore asked the court to allow us until the following Thursday to get our evidence in the case. The judge seemed willing, but counsel for defendant, W. A. Blount, and who is also one of the defendants in the McGuire suit, which is an ejectment suit, with much warmth insisted on the trial on Monday, November 11, to which the judge acquiesced.

"This was Saturday, 9th, after office hours; next day being Sunday, no summons for witnesses could issue, thus having only from the opening of clerk's office at 9 o'clock Monday, 11th, until 10 o'clock, opening of court (one hour) to issue summons and serve more than 50 witnesses, which was physically impossible. While we were satisfied that said judge is interested in the result of said suit, still he refused to recuse himself. Our intention was to try the case before him had he fixed a day for trial so that we could have secured our evidence thereto and made our record, but when thus arbitrarily cut off therefrom our duty to our clients was to discontinue the suit to prove their rights, which discontinuance of said suit, upon motion, was ordered by Judge Swayne at 10 o'clock on the morning of November 11, 1901, and after which the motion or rule for contempt was inaugurated by W. A. Blount, attorney, and a defendant.

"Fourth. In paragraph 7 of said certificate said judge refers to consultation with some members of the bar, but does not name them, but finally selects W. A. Blount to call the matter of contempt before the court, assisted by W. Fisher, of whom are defendants in the suit of Mrs. McGuire v. Pensacola City Company et al., and trespassers on a large portion of the land in question. Now, while there is no act charged against us which under the law we were not entitled to do, still we make reply to statements and certificates, to place it beyond doubt that we have acted strictly within the line of our sworn duty to our clients, which we have a right to do under the law, and there can be no contempt, and no contempt was ever intended or thought of, in suing Charles Swayne in a State court, and especially is it so demonstrated by a discontinuance of suit in Federal court.

" OATH.

"Elza T. Davis, being duly sworn, deposes and says that all the facts and allegations recited in the foregoing exception and statement are true and correct, to the best of his knowledge and belief.

" E. T. DAVIS.

"Sworn to and subscribed before me this 23d of November, 1901, at the city of New Orleans, La.

[SEAL.]

" BENJAMIN ORY,

" Notary Public for the Parish of Orleans, La.

"(Indorsed:) United States circuit court, fifth judicial circuit, northern district of Florida, ex parte Elza T. Davis applying for writ of habeas corpus. Exceptions and statement of relator received and filed November 23, 1901. H. J. Carter, clerk. Filed December 10, 1901. F. W. Marsh, clerk.

"NORTHERN DISTRICT OF FLORIDA, ss:

"I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing is a true and correct copy of a certain paper filed in the matter of the application of El T. Davis for a writ of habeas corpus, in the said circuit court, as the same remains of record and on file in said court.

"Witness my hand and the seal of said court at the city of Pensacola, in said district, this 24th day of February, A. D. 1904.

" F. W. MARSH, Clerk."

A petition in the same language was prepared, sworn to, and filed by Mr. Belden.

There can be no doubt, from this positive evidence, that Mr. Davis was an attorney in the case when he commenced the action against Judge Swayne, and that he knew Judge Swayne had no interest in the land can not be doubted, and the finding to the contrary by the majority is not supported by a preponderance of evidence.

The following is the record in the case of Simeon Belden, and the record of Mr. Davis is just the same.

**"THE UNITED STATES AGAINST SIMEON BELDEN.**

"Be it remembered that on the 11th day of November, A. D. 1901, at a term of the United States circuit court in and for the northern district of Florida, the following motion was made in open court and entered of record, to wit:

"And now comes W. A. Blount, an attorney and counselor at law of this court, and practicing therein, and as amicus curiæ, and moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court at a day and hour to be fixed by the court, why they shall not be punished for contempt of the court in causing and procuring, as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91, in the Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then pending in this court in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company et al. were defendants, upon the grounds:

"1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of Mrs. Florida McGuire v. Pensacola City Company et al. had been submitted to the court on November 5, 1901, and denied, and after the said judge had stated in open court and in the presence of the said counsel, Simeon Belden and Louis Paquet, that an allegation of the said petition, that he or some member of his family were interested in or owned property in said tract, was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract, because the said suit of Florida McGuire, involving the title to the said tract, was in litigation before him, the said judge.

"2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part of the said tract and had no reason whatever to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely occupied.

"3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of the said attorneys to postpone the trial of the case of Florida McGuire v. Pensacola City Co. et al. for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

"4. That the said E. T. Davis was, before the instituting of the said suit against the judge, cognizant of all the facts herein set forth.

"W. A. BLOUNT,  
"An Attorney of this Court.

"November 11, 1901."

"And afterwards, and on the same day, to wit, on the 11th day of November, A. D. 1901, the following order was made and entered of record in the said cause, to wit:

"In re matter of contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

"Upon reading the motion of W. A. Blount, an attorney and counselor of this court, for a citation to Simeon Belden, Louis Paquet, and E. T. Davis, why they should be committed for contempt, for the reason set forth in said motion, and after consideration of the same, it is ordered:

"That the said Simeon Belden, Louis Paquet, and E. T. Davis be, and they are hereby, cited to appear before me, Charles Swayne, judge of this court, at 10

o'clock, on Tuesday, November 12, 1901, to show cause why they should not be punished for contempt upon the grounds and for the reasons set forth in the said motion, which is now of record in the records of said court, and a copy of which is to be attached by the clerk to the copy of this order served upon the said Simeon Belden, Louis Paquet, and E. T. Davis.

"Ordered in open court this 11th day of November, A. D. 1901.

"CHAS. SWAYNE, *Judge.*"

"At the time of the presentation of the said motion by the said W. A. Blount, in open court, on November 11, 1901, the said Simeon Belden and the said E. T. Davis were present in the said court, and before making said order the said judge made and directed to be spread upon the minutes the following declaration concerning his connection with the land in the Cheveaux tract, mentioned in said motion, to wit:

"On Tuesday, November 5, 1901, at the time of the presentation of the said motion by plaintiffs, that the court recuse himself, he had then stated, and now states, that he never agreed to accept, nor ever accepted, any deed to any portion of the said Cheveaux tract; that, as he stated, a member of his family, to wit, his wife, had, with money inherited by her from her father's estate, negotiated for the purchase of some city lots in Pensacola; that certain deeds in connection therewith had been sent to her in Delaware, one of them proving to be a quitclaim deed, and upon investigation and inquiry it was found that the property in this deed was a portion of the property in litigation in the suit of Florida McGuire v. Pensacola City Co. et al., and that thereupon, and by his advice, the said deed was returned to the proposed grantors, with the statement that no further negotiations whatever could be conducted by them in relation to this property, and they thereupon refused to purchase, either at the present time or in the future, any portion of the said tract.

"W. A. Blount, an attorney and counselor at law of this court and practising therein, and as *amicus curiæ*, moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court, at a day and hour to be fixed by the court, why they should not be punished for contempt of this court in causing and procuring as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, to be issued from said court and served upon the said judge of this court, to recover the possession of block 91, Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then pending in this court in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Co. et al. were defendants upon the grounds:

"1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of Florida McGuire v. Pensacola City Co. et al. had been submitted to the court on November 5, 1901, and denied, and after the said judge had said in open court and in the presence of the said counselors, Simeon Belden and Louis Paquet, that the allegation of the said petition that he, or some member of his family, were interested in or owned property in said tract, was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract because the said suit by Florida McGuire, involving the title to the said tract was in litigation before him, the said judge.

"2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part whatever of the said tract and had no reason to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

"3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of said attorneys to postpone the trial of the said case of Florida McGuire v. Pensacola City Co. et al. for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

"4. That the said E. T. Davis was, before the instituting of the said suit against the said judge, cognizant of all the facts herein set forth.

"(Indorsements:) In re contempt proceedings Simeon Belden, E. T. Davis, and Louis Paquet. Filed November 11, 1901. F. W. Marsh, clerk.

"(Marshal's return:) United States of America, northern district of Florida, ss. I hereby certify that I served the annexed citation on the therein-named Simeon Belden and E. T. Davis, the within-named Louis Paquet not found, being outside the northern district of Florida, by handing to and leaving a true and correct copy thereof with Simeon Belden and E. T. Davis personally, at Pensacola, Escambia County, in said district, on the 11th day of November, A. D. 1901. T. F. McGourin, United States marshal. By R. P. Wharton, deputy.

"And thereafter, to wit, on the 12th day of November, A. D. 1901, the following answer was made and entered in the said cause by the said defendants therein, to wit:

"Before the Hon. Charles Swayne, judge circuit court United States, northern district of Florida. In re matter of the contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

"And now comes Simeon Belden and E. T. Davis, and for reasons why they should not be punished for contempt, sheweth:

"First. That the general grounds upon which the said contempt is based, to wit, summons in ejectment issued from the circuit court of Escambia County, Fla., wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, that said proceedings is in the jurisdiction of the circuit court of Escambia County, Fla., and that this court is without jurisdiction thereof.

"Second. That the petition to recuse referred to in said motion they had nothing to do with before this court, nor were they present on the 5th day of November when submitted, as stated in said motion, nor present when any statement made by the judge concerning his connection with any of the property, except the statement made by said judge on November 11, after court convened and after the motion to discontinue the case of Florida McGuire v. Pensacola City Co. et al. was made.

"Third. To the second paragraph sheweth: As above stated, they heard no declaration made by the judge referred to in said paragraph, and as for reasons to believe that he, Judge Swayne, or some member of his family, was interested in block 91, Rivas tract of land, named in said summons, we simply refer to the declaration made by Hon. Charles Swayne on November 11, 1901, when said motion was made by the Hon. W. A. Blount, and that after hearing said declaration, believe there is in existence a deed to Mrs. Charles Swayne uncanceled, and that they have no knowledge of its repudiation, and as the negotiations for the property named in said deed was one made by Mrs. Charles Swayne in her individual right, that no act of the said Hon. Charles Swayne would repudiate or render null and void any transaction made by Mrs. Charles Swayne with her own money or property.

"Fourth. That E. T. Davis, for himself, sheweth that this court had no jurisdiction over him in said matter of Florida McGuire v. Pensacola City Co. et al. until he requested the court to mark his name as attorney for plaintiff on the morning of November 11, when he presented the motion to discontinue the aforesaid suit.

"SIMEON BELDEN.

"E. T. DAVIS.

"(Indorsements:) Before the Hon. Charles Swayne, judge of the circuit court of the United States for the northern district of Florida, at Pensacola. In re contempt against Simeon Belden, Louis Paquet, and E. T. Davis. Filed November 12, 1901. F. W. Marsh, clerk."

"And afterwards, to wit, on the same day, November 12, 1901, the following proceedings were had in open court, to wit:

"The United States v. Simeon Belden, No. 249, contempt of court.

"This cause coming on to be heard on the motion of W. A. Blount, attorney and counselor at law of this court, as amicus curiæ, to cite the said Simeon Belden to show cause why he should not be punished for contempt of this court for the reasons in said motion distinctly alleged, and on the rule granted on said motion, dated November 11, 1901, a certified copy of which has been duly



served on said Simeon Belden, and on the answer to said rule on this day read and filed in open court by and on behalf of the said Simeon Belden; and after hearing the testimony of the witnesses introduced by the United States and by the said defendant, and after duly considering the same:

*"It is now ordered and adjudged,* That the said Simeon Belden is guilty in manner and form as in said motion and rule set forth of the facts therein alleged; and it is further adjudged that the same constitutes a substantial contempt of the dignity and good order of this court.

*"Wherefore it is ordered and adjudged* that the said Simeon Belden do pay a fine or penalty to the United States Government of \$100, and that he be taken hence to the county jail of Escambia County, Fla., at Pensacola, there confined for and during the term and period of 10 days from the 12th day of November, 1901, and that he stand committed until the terms of this sentence be complied with or until he be discharged by due course of law.

*"Ordered and done* this 12th day of November, A. D. 1901.

*"CHAS. SWAYNE, Judge."*

At the hearing witnesses were examined, but their testimony is not furnished us and all we have is a short statement by Mr. Blount of what took place.

In the absence of any of the testimony taken at the hearing we have no right to assume that the allegations of the statement filed charging the contempt were not proven or that the evidence was not sufficient to warrant the finding of the court that a contempt had been committed. On the contrary, the presumption is that they were and that the evidence was sufficient to warrant and support the judgment of contempt entered by the court.

Mr. Belden and Mr. Davis were attorneys of Judge Swayne's court, and were both attorneys in the case of Florida McGuire, pending in his court. When they requested the judge to recuse himself because he owned a part of the property involved in the litigation, they were informed by the judge that he owned no interest whatever in this land, and they must have known that he did not. The slightest inquiry on their part would have disclosed this fact, and they admit if anyone owned an interest it was Mrs. Swayne. On Saturday the court informed them that on Monday he would proceed with the case; they desired a postponement until Thursday. A jury was in attendance and there was no reason why the case should be postponed for that length of time. The witnesses were all within half an hour call of the courthouse, and the parties had all week in which to get ready.

The court said he would proceed with the trial Monday morning unless they made a motion for continuance under the rule, and they said they would do so, and at that time they had in their mind what they afterwards did. Now, what followed? Paquet, Davis, and Belden in the evening met in the grocery store of one of the plaintiffs and consulted what course to take. It was decided to bring an action against Judge Swayne, individually, to oust him from a portion of the land embraced within this litigation and for \$1,000 mesne profits, when they all well knew, and must have known, that he had never been in the possession of the land and never owned it. They went to the clerk's office, got him to go to the courthouse and file the suit. Then the sheriff was found and he was instructed to serve the papers at all hazards that night. They were not satisfied with this, but they wanted to give the suit publicity. They wanted to advertise to the world that Judge Swayne was intending to try the question of title to property in which he owned an interest, and, following this out, prepared a statement of the case and gave it to the morning paper to be published, which was done.

The only excuse they have yet been able to give for this unseemly haste is that they wanted Swayne served before he left the State, a most flimsy and unreasonable excuse. There is only one conclusion that a fair and reasonable mind can draw from all of these facts, and that is, they wanted, desired, and expected, by bringing a fictitious suit, to force Judge Swayne to recuse himself and continue the action. They wanted to so embarrass him that, though not disqualified, he would refuse to hear the action, and if this conclusion is true there can be no doubt, as attorneys and officers of the court, they were guilty of gross misbehavior, and clearly were guilty of contempt within the meaning of section 723 of the Revised Statutes.

It is true that Judge Swayne for this contempt imposed both fine and imprisonment, but this error of law was corrected by Judge Pardee, and surely it can afford no reason for impeachment. Belden and Davis say his manner in passing judgment was harsh and abusive, but all Davis can remember that was



said is that the court charged them with ignorance and that their actions were a stench in the nostrils of the community.

This last remark must be very doubtful. But if they were guilty of what they stood charged, if they had collusively and in bad faith commenced this action to interfere with the trial of the case by Judge Swayne and prevent the defendants from securing a speedy trial before the judge of the court, then they were guilty of contempt, and this contempt was not purged by coming in later and dismissing the suit or by the judge using toward them harsh and abusive language.

Mr. Davis sued out a writ of habeas corpus before Judge Pardee. At the hearing Judges McCormick and Shelby sat with him and concurred in his opinion.

The court says:

"The relator is an attorney and counselor of the United States circuit court for the northern district of Florida, and, as such, one of the officers of the court, within the intent and meaning of the above statute. As such officer he was and is charged with conduct in and out of court which, if accompanied with malicious intent, or if it had the effect to embarrass and obstruct the administration of justice, was such misbehavior as amounted to contempt of court."

The writ of habeas corpus was discharged. There is no doubt that this suit was brought with no intention to ever try it; in fact, it was dropped. And there can be no other conclusion but that the commencement of this action could have no other effect than to embarrass and obstruct the administration of justice. The fact that the suit was commenced in the State court can make no difference, because its effect, as intended, was to embarrass Judge Swayne in trying the action pending before him in the United States court.

Plaintiffs dismissed the suit, but in a few months commenced it again in Judge Swayne's court, which fact shows that when they dismissed it first they had no intention to abandon it.

But the majority find fault and lay great stress upon the fact that, in his judgment, finding Belden and Davis guilty of contempt, that he does not, in the language of the statute, find them guilty of misbehavior as officers of his court, but adjudged that their conduct constituted a substantial contempt of the dignity and good order of the court. And is it not true that a misbehavior of an attorney is a contempt of the dignity and good order of the court?

To embarrass the court in the administration of justice surely must be a contempt of the orderly conduct of the court in its business.

In discussing Judge Swayne's action in passing judgment of contempt against Belden and Davis, the majority show considerable feeling. The committee charge that he was "guilty of gross abuse of judicial power and misbehavior in office," and that knowing the law, and knowing that no contempt had been committed, he, with a bad and evil intent, declared them guilty. This is making a very broad accusation when we consider all of the facts and surrounding circumstances and the law controlling the same.

The committee say that Judge Swayne "knew that proceedings for a contempt not committed in the presence of the court must be founded on an affidavit setting forth the facts and circumstances constituting the alleged contempt" and "knew that issuing of proofs without filing was erroneous," and "knowing the law, Judge Swayne issued a rule to show cause why Davis and Belden should not be committed for contempt upon an unsworn statement of Mr. W. A. Blount."

Now, it is to be hoped that the House will not vote to impeach anyone for a mistake of law or ignorance of it, for if such a precedent is established none of us will be safe. It might be possible that Judge Swayne did not know the law as stated above, and it might be possible that such is not the law. It is true that the committee cite one California and two Indiana cases, but in California the Code of Civil Procedure provides that a contempt committed out of the presence of the court can only be called to its attention by affidavit, and no doubt Indiana has a similar statute.

There is no settled practice in contempt proceedings (*United States v. Sweeney*, 95 Fed., 446). In volume 9, page 38, of the *Cyclopedia of Law and Procedure* we find the law stated as follows:

"As a rule the proceeding to punish for contempt committed out of the presence of the court should be instituted by a statement or some writing or affidavit presented to the court setting forth the facts."

Numerous authorities from all over the United States are cited to support this proposition of law.

And it has been held that in such a case the court may even act of its own motion and make the accusation. (24 W. Va., 416; 81 Mich., 592; 27 How. Prac., 14.)

It might have been possible that Judge Swayne did not know of the decision in California or the statutes of Indiana, but followed the rule as stated above.

It is claimed that Davis and Belden purged themselves of contempt. The law on this question has already been given, and it is not necessary to report it again. The affidavit or answers filed by Davis and Belden were not broad enough under the rule, and Belden said, when asked a question at the hearing, that he did not purge himself and would not do it. But look at the matter seriously from the facts and circumstances that existed at the time judgment was pronounced.

The majority report proceeded on the theory that the action was commenced in good faith and upon substantial grounds; that having commenced the action in the State court no contempt could have been committed against the Federal court. If attorneys, who are officers of the Federal court, to embarrass the judge of that court in the administration of justice, commence an unmeritorious action in the State court against him, is it not contempt? Is there any law by which the place in which the contempt has been committed excuses it? Was the action brought in good faith? No; for this reason: Belden, Davis, and Paquet are all good lawyers; they knew that Mrs. Swayne was buying the land; they knew that the deed had been made in her favor, and therefore they knew that if the title had ever left Edgar it vested in her. Being lawyers they must have known that if the title was in her no judgment against Judge Swayne individually would divest her of that title, and therefore such a judgment would avail their clients nothing. If they were acting in good faith for the purpose of trying title to land, knowing all of the facts just stated, they certainly would have sued Mrs. Swayne as the owner of the land and joined her husband with her.

Belden says:

"It was so positive she had purchased it.

"Q. Did you have any reason to suppose Judge Swayne had exercised any acts of ownership?—A. No.

"Q. Did you have any such information before you brought the suit?—A. I did not. When we learned that suit was pending in the county judge's court against Edgar that revealed the fact that sale had been made to Mrs. Lydia C. Swayne."

Commencing an action against Judge Swayne alone, after he had stated that he would proceed with the trial of the case unless they made a motion to continue it under the rule, and they having stated they would do so, is very suspicious, and is made more so when they never did anything further with the suit. There can be no doubt that they were acting in bad faith. There can be no doubt of their motives and what they sought to accomplish. Why was it necessary to proceed with such haste? Why was it necessary to find the clerk and sheriff that Saturday night and cause one to file the papers and the other to serve them? If they intended to dismiss the suit Monday morning, as they now claim, why did they not wait until Monday and commence the suit after the other action had been dismissed? Why was it necessary to prepare an article for the paper and procure its publication that night?

There can only be one answer to all these questions, one explanation of their conduct—that it was their intention to carry out the statement made to the court that they would show grounds for a continuance Monday morning. There can be no other sane reason; no other reason can explain their conduct. All of this was done to embarrass the court in the trial of the case pending before him. They were seeking to force him to recuse himself, or, if he persisted in trying the case, to do so in the face of the charge, made public by the press, that he was, as judge, trying title to a piece of land in which he owned an interest. Where is the court in the land that would permit such conduct as this to pass unnoticed and unchallenged? Did not Judge Swayne, under all these circumstances, have the right to inquire into this matter and punish the parties if guilty? And having committed the contempt, could they purge themselves by dismissing the action? The contempt was committed Saturday evening, for if they could have been punished then, and can it be seriously urged now that dismissing the action, perhaps because of what they had done, that they stood innocent of any wrong when their trial took place? Such a contention can have no support in reason. The judge did his duty as he saw it, and the fact certainly warranted his belief. This seems to be a very slim charge on which

to impeach a Federal judge. There were certainly good grounds for his action, and he had the right, from all the peculiar facts and circumstances, to believe a contempt had been committed.

After the hearing was closed the following papers filed in the contempt proceedings of Belden and Davis were received, and the same are hereby embodied in this report.

The following is a copy of the newspaper article which it is alleged Belden, Davis, and Paquet prepared and procured to be published:

"JUDGE SWAYNE SUMMONED AS PARTY TO THE SUIT IN CASE OF FLORIDA M'GUIRE V. PENSACOLA COMPANY ET AL.

"A decided new move was made in the now celebrated case of Mrs. Florida McGuire, who is the owner by inheritance and claims the possession of what is known as the 'Rivas tract,' in the eastern portion of the city, near Bayou Texas, by the filing of a præcipe for summons, through her attorneys, ex-Attorney General Simeon Belden, Judge Louis P. Paquet, of New Orleans, and E. T. Davis, of this city, in the circuit court of Escambia County, in an ejectment proceeding for possession of block 91, as per map of T. C. Watson which is part of the property which is claimed by Mrs. Florida McGuire and which is alleged that Judge Swayne purchased from a real estate agent in this city during the summer months, and which is a part of the property now in litigation before him.

"The summons was placed in the hands of Sheriff Smith late last night for service.

"Filed November 12, 1901.

"F. W. MARSH, Clerk."

The following is a copy of a statement filed by Louis P. Paquet in Judge Swayne's court, and connected with the commencement of the action against Judge Swayne by himself, Belden, and Davis in the State court of Florida, referred to in the foregoing newspaper article:

"United States circuit court, northern district of Florida, at Pensacola.—In the matter of contempt proceedings against Louis P. Paquet.

"Now comes Louis P. Paquet, respondent in the above-entitled matter, and says:

"That upon full and mature consideration of his actions and conduct in the matter referred to in the motion, made as the basis of the above-entitled proceedings, through excessive zeal in behalf of his clients, he did so act that this honorable court was justified in believing that the said actions were committed in contempt thereof and as showing disrespect therefor. That respondent regrets exceedingly the course taken by him in this matter, and now appears in court and requests that he be permitted to apologize for his behavior and file with the records in the above-entitled cause this paper.

"LOUIS P. PAQUET, Respondent.

"Filed March 31, 1902.

"F. W. MARSH, Clerk."

The contempt proceedings against Mr. Paquet were dropped.

#### HOSKINS CASE.

Fourth. The majority contend that Judge Swayne should be impeached because he refused to proceed to trial in the W. H. Hoskins bankruptcy proceeding, when the attorneys for the petitioners were asking for a continuance for two weeks in which to secure certain evidence.

I find the facts of this case to be as follows:

On February 10, 1902, an involuntary petition in bankruptcy was filed in Judge Swayne's court against W. H. Hoskins.

On February 24, B. S. Liddon appeared in said matter on behalf of said Hoskins and demurred to the petition. On the 24th of February, John M. Calhoun was appointed receiver and on the 25th gave the usual bond, which was approved on the 26th.

On the 27th of February the court sustained the demurrer to the petition, one of the grounds being that the petition was not verified as required by law,

and also that the petition did not set forth if the petitioning creditors were firms, partnerships, or corporations, and gave petitioners 10 days in which to amend their petition. After that, and in fact before this date, B. S. Liddon, the bankrupt's attorney, and who appears in this proceeding as the chief counsel for the prosecution, commenced industriously to get creditors to withdraw their petitions and claims, and, it is alleged, made misrepresentations and threats to secure affidavits from petitioners and to cause them to withdraw their claims, so as to defeat the bankrupt proceedings pending before the court, which facts are set forth in affidavits filed in the cause by J. W. Calhoun and J. Hartsfield; and in the case of Hartsfield it is stated that he signed the affidavit through fear of Hoskins and one Justice, and that notwithstanding the petition he signed he desires the proceedings to go forward.

The court on motion extended the time to file an amended petition to March 9, and on March 22 W. H. Hoskins filed his answer thereto. On March 20, Hoskins having given a bond in the sum of \$5,000, had his property all turned over to him by the receiver, and he took the possession thereof and continued his business. On the 5th day of March, 1902, Charles D. Hoskins, son of the said alleged bankrupt, at the suggestion of his father to get a certain book, made an assault upon one J. N. Richardson, the deputy of the receiver, pulled him out of his buggy, beat him violently, causing the said Richardson, who was an old man, to remain in his bed for some time, and took from him the book; that this book was a book taken by the receiver from the place where the bankrupt Hoskins carried on his business, and which it was alleged by the receiver, upon information and belief, belonged to the alleged bankrupt and contained his accounts. For this assault upon Mr. Richardson, an officer of the court, Judge Swayne issued a rule for C. D. Hoskins to appear before the court and show cause why he should not be punished for contempt. Hoskins concealed himself, was never served, and never appeared before the court, and never surrendered the book.

On March 24 or 25 the cause was set down for trial to take place on the 31st. Mr. Hoskins contended that he was solvent and could meet all his obligations and was ready and willing to do so, which was a fact. But he, through his attorney, refused to pay one cent of costs, and here is where all the trouble arose. Had he been willing to arrange for the payment of the costs everything could have been settled and dismissed at once without any trial. He never requested the court to fix the amount of costs, because he refused to pay any at all.

Considerable cost had been incurred, the United States marshal alone having a bill of \$304 for taking care of property and feeding stock. On the morning of March 31 the attorneys for petitioners requested the court to continue the case for two weeks, as they could not safely proceed to trial without the book, which they were informed and believed contained material evidence, and which C. D. Hoskins had by force and violence taken from the custody of the receiver, and which he refused to return.

This motion was resisted by the bankrupt, he contending that he was ready for trial, that the book was not his, and that he could prove by witnesses present that the book was not his. He also claimed that he had no control over the book. Judge Swayne, notwithstanding this offer, refused to hear the evidence; said he would not believe his brother under the circumstances, and insisted he would continue the case until the book was produced. The majority condemn Judge Swayne for this conduct and contend he should be impeached for it. The case had only been at issue five or six days; all of the property was then in the possession of the bankrupt and not under expense. He had full control of his business. Also many things had come to the attention of the court in this matter besides taking the book that might well cause him to proceed with caution, to doubt the honesty of the bankrupt, and to believe that the book contained material matters and which the court should know.

Petitioning creditors had been requested to withdraw their claims, some had been threatened, and the deputy of the receiver had been assaulted in a most brutal manner and a book taken from his possession which it was alleged contained the accounts of the bankrupt. Under all of these circumstances it can not be said the court did not act with due discretion when the case was continued.

The right to continue a case rests always in the discretion of the judge. He did not deny Hoskins a trial; he did no act which injured him in his rights.



Hoskins already was in the possession of his property, and the judge was ready to try the case and did offer to try it in June, but the parties had stipulated to try it in the following November, showing there was no hurry about a trial. It never was tried, but was settled, the bankrupt agreeing to pay part of the costs, and, in fact, the question of costs was all there was in the case and all that kept it from being settled in March.

The majority lay great stress on the fact that some lawyers had entered into a conspiracy to ruin Hoskins and plunder his estate. If this should be true, the court was not a party to it, and it was never brought to his notice. The judge acted absolutely in good faith, and there is no evidence whatever that he lent himself to any conspiracy.

The attorneys on both sides are not to be commended for their conduct in this matter, and surely what they did or what they desired to do can not be used as a basis to impeach the judge, especially when he was ignorant of it all. He sustained the demurrer; he released the property; he was willing to try the case and came to Pensacola in June to do so, and did not do so from the fact that these parties, who were so desirous for a speedy trial to the end that they would not be ruined in their property and credit, had entered into a written stipulation that the case should be tried at the November term.

This is the Hoskins case, as it appears from the record, and for the judge's conduct in this case this committee is asked to impeach him. Still, if he is to be impeached, the grounds for doing so in this particular case are just as good and substantial as in any other instance presented by the prosecutors of the resolution. Liddon, who is the chief prosecutor in this action, was trying to force matters and was also interfering with the clients of the creditor's attorneys. The creditors wanted a book produced in court that Hoskins told his son to take from the receiver. The books must have been in Hoskins's control, and were the best evidence of what they contained. Had the books been produced for the inspection of the court there would have been no trouble or delay, and this, no doubt, Hoskins could have done. Under the circumstances the court could well have granted the continuance asked, and there was no abuse of discretion in doing so. Hoskins could not have been injured by reason of this continuance, because he had all of his property in his possession, was carrying on his business, and was suffering no loss. In fact, he agreed to postpone the trial until the following November, notwithstanding that the court was willing to try it earlier, which alone is a strong reason that no injury was done to Hoskins.

#### TUNISON CASE.

They say Judge Swayne appointed one B. C. Tunison a United States commissioner after Tunison had been impeached in his court. Tunison was a commissioner in 1892 or 1893. He claimed to have been shot by one Humphreys and caused his arrest. Humphreys was tried in 1892 or 1893, and the trial was a bitter one. Tunison was impeached at that time. Tunison is one of the ablest lawyers in Florida and is so conceded. He discharged the duties as United States commissioner well and without complaint. He had the very best citizens of Pensacola for his clients and as his friends.

In 1897 the entire bar of Pensacola indorsed him for United States district attorney for the northern district of Florida. At the same time many of the best and most prominent citizens wrote letters in his behalf. After this indorsement by the bar in 1897 his term expired and he was reappointed by Judge Swayne. Most of those who impeached him were his enemies. His friends said his reputation as a citizen was good. His enemies spoke ill of him, and his friends spoke well of him, but no charge was ever made against him for neglect or wrongdoing in his official duties, and he has been commended for the able and efficient manner in which he discharged them. But it is said that it is reported in Florida that Tunison has and exercises an undue influence over the court, so that, as generally understood, to win in Judge Swayne's court you must employ Tunison.

There is no evidence that this rumor ever came to the attention of Judge Swayne, or that it is well founded. There is no instance shown wherein Judge Swayne ever granted any favor to Tunison. There is nothing to prove that at any time, or in any proceeding, Judge Swayne was corruptly or otherwise influenced by Tunison. But this charge caused an examination of the records to be made, and it appeared therefrom that out of 18 cases tried by Mr. Tunison before Judge Swayne he lost 12. And he further show that this charge is un-



true—that is, that Tunison has influence with the court—I only have to call the attention of the committee to the instance where Tunison was employed to see Judge Swayne and induce him to dismiss the charge for contempt against C. D. Hoskins for assaulting and cruelly beating an officer of the court, and the judge's refusal to do so until Hoskins, who had been evading the officers of the law, should present himself before the court.

It is not an uncommon thing to hear that an attorney has influence with a judge, and some go so far as to state that it is a corrupt influence; but never before now did I hear it seriously contended that because of such a rumor, of which the judge had no knowledge and which is unfounded in fact, the judge should be impeached and removed from office.

This ground for impeachment demonstrates one thing, and that is the animus behind this entire proceeding is to impeach Judge Swayne at any hazards. A number of witnesses, many enemies of the court, or in the pay of O'Neal, go on the witness stand and swear to a rumor which they have heard, to wit, that Tunison exercises an undue influence over Judge Swayne, and without any evidence showing such to be the fact, without the showing of a single instance in which the court ever favored Tunison or decided a case in his favor wrongfully, without showing that the Judge ever acted corruptly or ever knew of such rumor, the majority of the committee present this as a ground for impeachment, and as a companion piece to this ground present another equally as unfounded in the contempt proceedings instituted against C. D. Hoskins.

#### CASE OF C. D. HOSKINS.

When the members of the subcommittee met to disagree, it was then agreed by us all that there was nothing in the charges concerning the contempt proceedings preferred against C. D. Hoskins which would warrant any impeachment, but I see that Mr. Palmer has now embraced the same within his report, and I am glad that he has, as it will show the members of the House the character of charges preferred and how unwarranted they are.

On the 5th day of March, 1902, C. D. Hoskins, a young man, assaulted a Mr. Richardson, who was a deputy of the receiver appointed in the Hoskins bankruptcy proceeding, dragged him out of his buggy, brutally beat him, and took from him a certain book or ledger, which it was alleged belonged to said bankrupt and contained accounts of his business transactions. Young Hoskins claimed that the book belonged to him. Mr. Richardson was an old man, and the beating was so severe that he was confined because thereof to his bed for several weeks.

The matter was brought to the attention of Judge Swayne by an affidavit filed for the purpose of commencing contempt proceedings against young Hoskins. The affidavit was in proper form and stated sufficient facts to justify the court in granting a rule for the attachment of young Hoskins to show cause why he should not be punished for contempt. Young Hoskins was never served. He kept in hiding. An attempt was made to get the court to dismiss the matter or to impose a fine, but Judge Swayne, considering the character of the assault and the fact that Hoskins had evaded the officers of the court, refused to do anything until Hoskins appeared in court and was examined. Hoskins was in the habit of becoming intoxicated, and one day he left for Pensacola with \$450 on his person, got to drinking hard, and was found dead, it being claimed that he took laudanum to commit suicide. Now it is claimed that he took the poison rather than face Judge Swayne. A more unreasonable and unfounded statement never was made. He was not under arrest. This was a long time after the contempt had been committed. Judge Swayne had made no threats against him, and had done no act to oppress him. All he ever did was to issue a rule upon an affidavit which made it his duty to do so. He did what any judge in the land would have done when it was brought to his notice that an officer of his court, while in the discharge of his official duties, had been assaulted, brutally beaten, and property in the custody of the law taken from him by force.

I am glad that the majority have made Young Hoskins's case a ground for impeachment, because it emphasizes the effort that is being made to unjustly ruin a man who has faithfully discharged his judicial duties. He has been guilty of wrongdoing, oppression, and tyranny because he found one man guilty of contempt for stabbing an officer of his court and interfering with him in the discharge of his duties and for issuing an order for the arrest of another who brutally assaulted another officer and took from him by force

property in his custody as an officer of the court. No judge was ever before in this country maligned, abused, slandered, and illtreated as Judge Swayne has been, and this maliciously, too. It has been reported of him by his enemies, and caused to be published in the press throughout the land, that he is a corrupt judge, ignorant and incompetent; that he has managed bankrupt estates pending in his court in such a manner as to absorb the entire estate in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is, in effect, legalized robbery and a stench in the nostrils of all good people.

The foregoing language first found form in a resolution lobbied by the said O'Neal through the Florida Legislature. It was again stated on the floor of the House of Representatives when this resolution was offered, and it has been published throughout the land in the public press, and there is not a scintilla of truth in any part of it, or no fact proven to warrant even the suspicion of such grave and serious charges. A subcommittee spent 10 days in Florida investigating these charges, and the result of their labors is now printed and on file with the documents of this House. Every opportunity was given to Judge Swayne's accusers to prove their charges. Every witness they wanted was subpoenaed, hearsay, irrelevant, and immaterial matters were received in evidence, and no obstacles were put in their way. Five lawyers for the prosecution for some time had been diligently at work, and I submit that not one single bit of proof can be shown where Judge Swayne ever did an act that was corrupt or unbecoming a just and upright judge. So much for the charges of corruption. The record introduced and printed, giving a list of cases tried by him and appealed, shows that as a judge he has made an excellent record and that he is not incompetent and ignorant.

The fact that Judge Pardee assigned him to sit on the circuit court of appeals and to try cases in different parts of the district for six, seven, and eight months during the year is a good recommendation for his standing as a judge. In fact, no one so far has had the hardihood to come forward and swear that he is an incompetent and ignorant judge, and there is nothing in the record that shows it.

As to the bankruptcy business, there can be no excuse for the slanderous statements made, to wit: That "all cases were managed corruptly, the assets frittered away, no dividends paid, until the matter became so notorious as to be a stench in the nostrils of the people." This is hard language, and, more than this, it is not supported by the evidence.

Out of 175 cases of bankruptcy commenced in his court the prosecutors picked out five or six. They were requested to call the attention of the committee to any wrongs committed in these particular cases, and this they failed to do. Out of 175 cases not one was shown to have been managed as they had charged. On the contrary, the report of the Attorney General shows that the bankruptcy business before Judge Swayne was managed prudently and well. Every judge has the right to have his honesty and integrity protected. Nothing so weakens the respect for a judge as to charge him with corruption. Nothing should be quicker frowned down by the people than such charges when false. Judge Swayne has for months stood up under these false and malicious reports—and they were malicious when made because they were based on no fact. He is entitled to vindication somewhere. The charges have been preferred in this House, the evidence is on file here, and he should receive his vindication here.

J. N. GILLETT.  
ROBT. M. NEVIN.  
D. S. ALEXANDER.  
GEO. A. PEARRE.

#### VIEWS OF MR. LITTLEFIELD.

I have not had the time to examine carefully the minority views of Mr. Gillett, but I have examined with care the record in this case, and I have no hesitation in saying that in my opinion it does not disclose a state of facts that would justify impeachment proceedings.

C. E. LITTLEFIELD.

#### VIEWS OF MR. PARKER.

In the opinion of the subscriber, proceedings for impeachment of Judge Charles Swayne should not be begun. It is not necessary always to justify his action, or to maintain that his behavior has always been consistent with judicial dig-

nity or the duty that he owes to his district. He has been out of that district a great deal of each year, but since 1901 he has rented a house there, and more lately his wife has purchased, and it can hardly be said that he has not resided there, within the meaning of this criminal statute, for a period covering all ordinary limitations of criminal prosecutions. Those limitations should govern this case.

It does not appear that his behavior in any of the cases cited by the majority renders him liable to impeachment. He was justifiably severe with O'Neal for getting into a quarrel with an officer of his court about his official action as receiver in bankruptcy and then stabbing him. He was right to be severe when young Hoskins beat the clerk of another such receiver and took from him books claimed by that receiver. He had occasion for righteous indignation against two attorneys of his court, who doubted his word when he denied all interest in a case pending before him and brought suit against him personally in order publicly to emphasize that doubt. In such a case he should not be censured even if he went to the limit of his jurisdiction to defend the honor of his court.

The adjournment of the proceedings in bankruptcy of the elder Hoskins was intimately connected with the contempt proceedings as to the younger one. There appears to be no substantial proof of the charges of corruption, ignorance, incompetency, deliberate waste of bankruptcy assets, criminal or improper favoritism to certain lawyers, failure to hold terms, improper acceptance of accommodation, indorsements from attorneys or litigants, or the wrongful discharge of convicts. In the opinion of the majority all these charges appear to be without foundation. Whether the conditions that prevail in this district demand some legislative remedy may be a question, which is not here now. In my opinion Judge Swayne is not liable to impeachment.

RICHARD WAYNE PARKER

### HOUSE OF REPRESENTATIVES, *April 7, 1904.*

[Congressional Record, volume 38, part 5, page 4431-4434.]

Mr. PALMER. Mr. Speaker, I present a privileged resolution.

The SPEAKER. The gentleman from Pennsylvania presents the following resolution as a matter of privilege.

The Clerk read as follows:

[H. Res. 302.]

*Resolved*, That the consideration of the resolution, numbered two hundred and seventy-four, reported by the Committee on the Judiciary in the matter of the impeachment of Charles Swayne, judge of the district court of the United States in the northern district of Florida, be postponed until the thirteenth day of December, nineteen hundred and four, and that the Committee on the Judiciary be, and it is hereby, authorized to take such further testimony as may be offered by the complainants or the respondent, and report the same to the House, with its conclusions thereon. The said committee and subcommittee shall have all the authority conferred by the original resolution, numbered eighty-six, and the further authority to take testimony when Congress is not in session.

Mr. PALMER. Mr. Speaker, I yield three minutes to the gentleman from Florida, who presented the original resolution.

Mr. LAMAR of Florida. Mr. Speaker, I regret exceedingly that it seems advisable that the matter of the impeachment of Judge Charles Swayne should be deferred until the next session of Congress. But there are cogent reasons that seem to point out that this course is the best one to pursue.

The printed evidence in this case is embraced in a volume of considerable size, comprising 360 pages, and included therein is the testimony of quite a number of witnesses and many pages of exhibits from the records of Judge Swayne's court relating to the amount of time he served in open session of his court for eight years, and relating to many bankruptcy matters, and to his fine and impris-

onment of several persons for alleged contempt of the authority of his court.

The report of the majority of the Judiciary Committee recommending the impeachment of Judge Swayne for high misdemeanor covers 23 printed pages. The views of the minority of the Judiciary Committee against impeachment cover 36 pages of printed matter. I doubt, Mr. Speaker, if one-fourth of the Members of this House have read carefully and with exactness the report of the majority and the views of the minority of the Judiciary Committee and the 360 printed pages of testimony in the case. It is absolutely essential that each Member of this House read carefully and accurately the report of the majority and the views of the minority and the printed evidence in the case before they can vote intelligently upon the question whether impeachment proceedings will lie against Judge Swayne.

It is well known that an early adjournment of this Congress is contemplated, possibly May 1 next. And it is well known to this Congress and to the country that much important business of this Congress touching upon legislation is yet not acted upon. It is also known that many Members of this House are now absent in their respective States engaged in a canvass for renomination. It is also well known that the attention of Members of both Houses of this Congress is, to a great degree, centered upon the issues involved in the two national conventions of the two great political parties, soon to occur, and upon the subsequent Presidential election to occur this year.

It is obvious, Mr. Speaker, for all these reasons, that the attention of this House can not be fixed with that certainty upon the issues involved in this case that the importance of these issues demand. And I appeal to this body, both Republicans and Democrats, that they may carefully examine the two reports made in this case, and the printed evidence, and prepare to vote on this great question with no other object in view except the cause of right and justice. And I rely with confidence upon the hope that the Members of this body, without respect to party affiliations, will bring finally to the consideration of this high question no feeling or sentiment except the single desire to reach a just and righteous conclusion.

Mr. PALMER. Mr. Speaker, I move the previous question on the adoption of the resolution.

The SPEAKER. The gentleman from Pennsylvania moves the previous question on the adoption of the resolution.

The previous question was ordered.

The SPEAKER. The question is on agreeing to the resolution.

The question was taken; and the resolution was agreed to.

On motion of Mr. Palmer, a motion to reconsider the vote by which the resolution was passed was laid on the table.

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### HOUSE OF REPRESENTATIVES, *December 9, 1904.*

[Congressional Record, volume 39, part 1, page 114.]

Mr. PALMER. Mr. Speaker, I ask leave to make a privileged report in the case of the Hon. Charles Swayne, judge of the northern district of Florida, submitted by the Judiciary Committee.

The SPEAKER. The gentleman from Pennsylvania makes the following privileged report, the title of which the Clerk will report.

The Clerk read as follows:

Report in the matter of the impeachment of Charles Swayne, judge of the United States in the northern district of Florida.

The SPEAKER. The report will be referred to the House Calendar, and ordered to be printed.

[House Report No. 3021, Fifty-eighth Congress, third session.]

In accordance with the permission expressed in the resolution of the House, of which the following is a copy:

“House resolution 302.

“*Resolved*, That the consideration of the resolution No. 274, reported by the Committee on the Judiciary in the matter of the impeachment of Charles Swayne, judge of the United States in the northern district of Florida, be postponed until the 13th of December, 1904, and that the Committee on the Judiciary be, and it is hereby, authorized to take such further testimony as may be offered by the complainants or the respondents, and report the same to the House with its conclusions thereon”—the subcommittee of the Committee on the Judiciary took further testimony offered by the complainant and the respondent on the 19th of April and on the 21st of November and the following days to the 30th, and the same is herewith reported to the House.

The testimony taken establishes the following facts, which are not disputed by the respondent:

1. That at a time when the Jacksonville, Tampa and Key West Railroad was in the hands of Mr. Durkee, a receiver appointed by Hon. Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, the receiver provisioned a private car which belonged to the railroad company, placed a conductor and cook upon it and sent it to Guyencourt, Del., for the purpose of bringing Judge Swayne to Jacksonville, Fla. Judge Swayne, his wife, his wife's sister, and her husband were transported on the private car to Jacksonville, Fla., and subsisted at the expense of said railroad company.

Judge Swayne acknowledged the facts, as above stated, but defended his action upon the ground that the property of the railroad company being in the hands of the court, he, the judge of the court, had a right to use it without making compensation to the railroad company.

When questioned on the subject he answered as follows:

“By Mr. PALMER:

“Q. You said this car was one of the cars in possession of the court, because the road was in the hands of a receiver?—A. Yes.

“Q. You said that it was the privilege of the court to use that car, because the road was in the hands of a receiver?—A. Yes; that was the reason why it was used.

“Q. You thought that the railroad being in the hands of the court you had the right to use the property of the railroad without rendering the railroad any compensation for it?—A. The receiver, in talking that over with me, stated that it was generally understood that a car was in better condition running than if it were standing idle on a siding.

“Mr. PALMER. Will the stenographer read that question, please?

“The STENOGRAPHER (reading):

“‘Q. You thought that the railroad being in the hands of the court you had the right to use the property of the railroad without rendering the railroad any compensation for it?’

“Mr. PALMER. That is the question.

“The WITNESS. Yes, sir. I had ten railroads in my hands as judge in six years.”

The testimony further establishes the fact that Judge Charles Swayne made use of the same car for the purpose of taking a trip to the Pacific coast with his family and friends. The proof was that the car had some liquid supplies on board when taken. Judge Swayne expressed the opinion that he left as much when it was returned.

In the case of the trip from Delaware, and also the trip to California, transportation was secured by the receiver over other railroads, and in return therefor the private cars from the other roads were transported over the Jacksonville, Tampa and Key West without charge. A porter or cook employed by the railroad company went with the car to the Pacific coast at the cost of the company.

The testimony further establishes the fact that for every day that Judge Swayne has held court out of his district since he has been a judge he has received from the



Treasury of the United States the sum of \$10, which has been paid upon his certificate that he had expended that sum for reasonable expenses. Judge Swayne's account, as proved by an official of the Treasury Department, is as follows:

Name of marshal paying voucher.	Account No.	Place of holding court.	Period covered by voucher.	Amount paid.
Guillotte.....	9349	Baton Rouge, La.....	Apr. 19 to May 4, 1895.....	\$140
Do.....	9349	New Orleans, La.....	May 13 to May 31, 1895.....	170
Love.....	18650	Waco, Tex.....	30 days from Nov. 18, 1895.....	300
Do.....	18650	Dallas, Tex.....	40 days from Jan. 21, 1896.....	400
Do.....	18650	Graham, Tex.....	2 days from Mar. 9, 1896.....	20
Do.....	26252	Waco, Tex.....	18 days from Apr. 27, 1896.....	180
Do.....	26252	Dallas, Tex.....	36 days from May 18, 1896.....	360
Do.....	29482	Waco, Tex.....	28 days from Nov. 18, 1896.....	280
Do.....	35513	Dallas, Tex.....	42 days from Jan. 11, 1897.....	420
Do.....	35513	Fort Worth, Tex.....	12 days from Mar. 1, 1897.....	120
Do.....	36910	Waco, Tex.....	23 days from Apr. 20, 1897.....	230
Do.....	36910	Dallas, Tex.....	39 days from May 17, 1897.....	390
Guillotte.....	61252	New Orleans, La.....	19 days from Jan. 1, 1898.....	190
Do.....	44704	do.....	40 days from Jan. 20, 1898.....	400
Do.....	44704	do.....	11 days from Mar. 1, 1898.....	110
Do.....	44704	do.....	10 days from Mar. 11, 1898.....	100
Do.....	44704	do.....	10 days from Mar. 22, 1898.....	100
Do.....	61252	do.....	10 days from Apr. 1, 1898.....	100
Do.....	61252	do.....	15 days from Apr. 16, 1898.....	150
Do.....	61252	do.....	10 days from May 1, 1898.....	100
Do.....	61252	do.....	19 days from May 11, 1898.....	190
Fontelieu.....	54281	do.....	19 days from Nov. 21, 1898.....	190
Do.....	54397	do.....	10 days from Jan. 30, 1899.....	100
Do.....	54397	do.....	10 days from Feb. 8, 1899.....	100
Do.....	54397	do.....	10 days from Feb. 18, 1899.....	100
Do.....	54397	do.....	10 days from Feb. 28, 1899.....	100
Do.....	54397	do.....	10 days from Mar. 10, 1899.....	100
Cooper.....	56988	Birmingham, Ala.....	28 days from Apr. 4, 1899.....	280
Do.....	56988	do.....	19 days from May 22, 1899.....	190
Do.....	60217	Huntsville, Ala.....	29 days from Oct. 9, 1899.....	290
Fontelieu.....	70206	New Orleans, La.....	10 days from May 24, 1900.....	100
Do.....	70206	do.....	10 days from June 2, 1900.....	100
Do.....	70206	do.....	5 days from June 12, 1900.....	50
Cooper.....	69592	Birmingham, Ala.....	29 days from Sept. 3, 1900.....	290
Do.....	73109	do.....	8 days from Sept. 3, 1900.....	80
Grant.....	71960	Tyler, Tex.....	31 days from Dec. 3, 1900.....	310
Cooper.....	78334	Birmingham, Ala.....	21 days from Sept. 2, 1901.....	210
Houston.....	93964	Tyler, Tex.....	41 days from Jan. 12, 1903.....	410

Witnesses with whom Judge Swayne boarded at Fort Worth, Dallas, Tyler, and Waco, in hotels and boarding houses, during the times when he held court in those places testified in part as follows:

"SAMUEL MCILHENNY, having been duly sworn, testified as follows:

"Direct examination by Judge LIDDON:

"Q. Give your name in full.—A. S. C. McIlhenny.

"Mr. HIGGINS. What is your first name?

"The WITNESS. Samuel.

"By Judge LIDDON:

"Q. Your residence?—A. Dallas, Tex.

"Q. Your business or occupation?—A. I am manager of the Oriental Hotel.

"Q. How long have you been such manager?—A. Eight years.

"Q. Were you such manager in January, 1896?—A. No; I was in the office in 1896. I was connected with the house.

"Q. In January, 1896?—A. Yes, sir.

"Q. Did you know Judge Charles Swayne?—A. Yes, sir.

"Q. How long have you known him?—A. Well, I did not know the judge until I went to the hotel. I was in a former hotel there. He was there when I first went to the hotel.

"Q. He was at the Oriental when you first went there?—A. Yes, sir.

"Q. You say that was when?—A. In 1896.

"Q. Do you know the date in 1896?—A. The first part of the year; I don't know exactly the date—either January or February. In January, I think it was, some time.

"Q. In January?—A. Yes, sir.

"Q. Do you know whether Judge Charles Swayne was at Hotel Oriental in January, 1896?—A. He was there when I went there. I went there in the latter part or middle part of January.

"Q. Do you know when he left?—A. No; I do not.

"Q. Can you refresh your memory from that memorandum—did you make that [submitting paper]?—A. The cashier or bookkeeper made that—

"Judge LIDDON. I submit this as an exhibit:

"EXHIBIT F.

"DALLAS, TEX., *March 5, 1896.*

"*Mr. Chas. Swayne to the Oriental, Dr.*

"[S. E. McIlhenny, manager.]

March 1 to 3/6, 6 days.....	\$16.00
For board month of Feb. 9 to 2/29, 20½ days.....	68.35
Feb. 1 to 2/9, 8½ days.....	19.80
Express, 2/3, .60.....	.60
Laundry, 2/12, 1.30, 1.10; 3/5, .75.....	3.15
Wine, etc., 2/26, .40.....	.40
Telegrams, 2/24, 1.15.....	1.15
Drugs, 2/6, 1.35.....	1.35
	<hr/>
	110.80
3/6, cr. by rebate on rate.....	\$13.80
3/6, cr. by cash.....	97.00
	<hr/>
	110.80

"The WITNESS (continuing). But I looked over it.

"Q. Is that his handwriting?—A. Yes, sir.

"Q. He is in charge of the books there?—A. Yes, sir.

"By Mr. PALMER:

"Q. Did you examine it to ascertain if it was correct or not?—A. Yes; I looked over it when he made it off the board book.

"By Judge LIDDON:

"Q. Do you know how much he paid for his board there in January, 1896?—A. I do not, only from this memorandum.

"Q. Can you tell from that memorandum?—A. Yes, sir.

"EXHIBIT G.

"DALLAS, TEX., *January 31, 1896.*

"*Mr. Chas. Swayne to the Oriental, Dr.*

"[S. E. McIlhenny manager.]

For board month of Jan. 20 to Jan. 31, 1896.....	\$26.80
Laundry, 20/95.....	.95
Wine, etc., 20/50.....	.50
	<hr/>
	28.25
Cr. Feb. 5, 1896, by chk.....	28.25

"Q. How much was it?—A. According to that, in January he paid \$28.25. The books correspond with this statement exactly; that is, in January.

"Q. He paid \$28.25?—A. Yes.

"Q. Now, were you connected with the same hotel—you said you were—in March, 1896?—A. Yes, sir.

"Q. Do you know whether Judge Swayne stopped at that hotel then, in February or March, 1896?—A. Yes, sir.

"Q. Do you know how much he paid?—A. He paid cash \$97.

"Mrs. ANNIE E. RUSSELL, having been duly sworn, testified as follows:

"Direct examination by Judge LIDDON:

"Q. Where do you live?—A. Tyler, Tex.

"Q. How long have you been there?—A. About 22 years.

"Q. You are engaged in running a hotel, or have been, or a boarding house there?—A. No, sir.

"Q. Have not at all?—A. No, sir; we just had a very large house, and during this court Mr. Butler came and asked me if I would take some of the judges and lawyers, and I told him I would. We had a large house and were renting the rooms. I had only been there about two years.

"Q. That was at Tyler?—A. Yes, sir.

"Q. Did Judge Swayne ever board with you there?—A. Yes, sir.

"Q. Do you know the date?—A. No, sir; I did not make any memorandum of it, but it was during the trial of the bank there.

"Q. In the United States court room?—A. Yes, sir.

"Q. Do you know in what year it was?—A. It was last year.

"Q. 1903?—A. Yes, sir.

"Q. Do you know what part of the year—the early part or the latter part?—A. It was January, as well as I can recollect.

"Q. Do you know how long he stayed with you?—A. From the beginning until the end. I did not keep any memorandum of it at all. He was there from the time the court opened until it closed.

"Q. You do not know how long; could not approximate the time?—A. I think it was about six weeks or more; I am not sure about that.

"Q. Do you know what rate of board he paid you?—A. Yes, sir; \$1.25 a day.

"Q. Did that include lodging?—A. Yes, sir.

"Mr. CLAYTON. That included table board and lodging?

"A. Yes, sir; everything.

"By Judge LIDDON:

"Q. \$1.25 a day?—A. Yes, sir.

"Q. In the early part of the year 1903 he was there from four to six weeks?—A. He was there during the whole term of court.

SUSAN LYLE DOWNS, having been duly sworn, testified as follows:

"Direct examination by Judge LIDDON:

"Where do you reside?—A. Waco, Tex.

"Q. You are engaged in the business of keeping a boarding house or hotel there?—A. A private boarding house.

"Q. How long have you been so engaged, madam?—A. Seventeen years.

"Q. Do you know Judge Charles Swayne?—A. Yes, sir.

"Q. Has he ever been a guest of your house?—A. I think three terms of court. Of course, I am not sure, but that is my recollection.

"Q. Three terms?—A. Three terms of court.

"Q. Can you fix the date?—A. No, sir; I can not.

"Q. Can you say whether it was since 1895?

"Mr. HIGGINS. Speak of your own knowledge and without suggestion.

"A. I really could not answer as to the year he was there. I could not; do not.

"By Judge LIDDON:

"Q. You can not say how many years, or approximate how many years ago?—A. If you can tell when Judge Rector was disabled, I could tell you, but otherwise I can not.

"Q. It was while he was holding United States court?—A. Yes, sir.

"Q. And he stopped with you three terms?—A. Yes, sir.

"Q. Did you ever know him to hold United States court there at any other time except the three times he stopped with you?—A. No; I don't remember it.

"Q. Do you know how long he stopped with you at the time he was there?—A. No, sir; I do not. I know he was at the term of court, but I never made any memorandum of it.

"Q. During a term of court three times?—A. I think so.

"By Mr. CLAYTON:

"Q. Do you mean the term while the court was lasting, the whole session of the court?—A. Yes.

"Q. Not just for a day and then a day?—A. Oh, no.

"By Judge LIDDON:

"Q. You can not approximate how long he would stay at a time?

"Mr. PALMER. About?

"A. I really do not know.

"By Mr. CLAYTON:

"Q. Was he a transient, or did he stay a day or half a day?—A. He stayed during the whole term. I suppose probably from three to five weeks possibly.

"Judge LIDDON. At a time?

"A. Yes.

"Mr. CLAYTON. That is to the best of your recollection, from three to five weeks?

"By Judge LIDDON:

"Q. Do you know what rates you charged him for board?—A. At the rate of \$40 for himself and \$65 for himself and wife.

"By Mr. CLAYTON:

"Q. What is that per month?—A. Per month. I do not want to do any injustice here. That is to the best of my knowledge.

"By Judge LIDDON:

"Q. And \$65 per month when he had his wife with him?—A. Yes, sir.

"Q. Are those your best rates?—A. Yes, sir.

"Q. All you ever charged?—A. Yes, sir.

"Q. You said he was there sometimes without his wife?—A. I think two terms without Mrs. Swayne; one term with her.

"Q. When he was there without her, it was \$40 a month, or \$65 for the two?—A. Yes, sir.

"Q. That included room as well as board?—A. Room and board.

"Q. Was it winter or summer that he was there?—A. I am not sure whether it was two fall terms or two spring terms of court. There was one term and then two of the other."

The act of Congress of 1871, Revised Statutes, section 596, provides, when a district judge is assigned to hold court out his district, as follows:

"And it shall be the duty of the district judge so designated and appointed to hold the district or circuit court aforesaid without any other compensation than his regular salary as established by law."

The act of 1881, page 454, provides as follows:

"And so much of section 596, Revised Statutes, as forbids the payment of expenses of district judges while holding court outside of their districts, is hereby repealed."

And the act of 1896, page 451, as follows:

"For reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts not to exceed ten dollars per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in settlement of his account with the United States."

It was admitted that Judge Swayne made and signed the certificates required by law before receiving each payment of \$10 per day, viz, that his reasonable expenses for travel and attendance amounted to a sum which was equal to \$10 for each day that he held court out of his district, whereas the testimony showed that his outlay for board and lodging at Waco, Tyler, and Dallas, Tex., ranged from \$1.25 to \$3 per diem, and that his traveling expenses from Pensacola could not have exceeded \$50.

Testimony was offered in behalf of Judge Swayne tending to prove that Boone and Calhoun did not conspire together to put Hoskins in bankruptcy; and also to prove that the books taken from Richardson, the receiver's clerk, by C. D. Hoskins, contained accounts of W. H. Hoskins. This testimony was contradicted by witnesses summoned on behalf of complainant.

The testimony of Prof. Wurtz, so far as the same relates to interviews with Attorney General Miller on the subject of appointing him judge in Florida, was denied by Mr. Miller, who states that he had no recollection of Mr. Wurtz, or of having conferred with him, but felt able to affirm that no such conversation as that detailed by Wurtz was had.

The following resolution was adopted by the Committee on the Judiciary:

"*Resolved*, That the Committee on the Judiciary respectfully report to the House the testimony taken in the case of Charles Swayne since Congress adjourned, with the conclusion that in their opinion said testimony strengthens the case against the said Charles Swayne."

[House Report No. 3021, part 2, Fifty-eighth Congress, third session.]

#### VIEWS OF THE MINORITY.

We do not think that the additional testimony strengthens the case against Judge Swayne, except in the particular hereinafter referred to. On the contrary, we think it materially weakens it in the particulars relied upon in the former report. As to those particulars, in our opinion the evidence wholly fails to justify impeachment proceedings.

We not only do not approve, but we distinctly and emphatically disapprove, however, of the matter of the use of the private car in the charge of the receiver, Durkee, in 1893. We think the judge's action in the use of the property and employees of the

receiver is a legitimate and proper subject of adverse criticism and censure, but since there is nothing in the record that tends to show that the judge was influenced in any of his judicial acts, either directly or indirectly, or was attempted to be influenced thereby, we do not think that the facts present a case of such gravity as to justify impeachment on that ground.

The making of false certificates for "reasonable expenses for travel and attendance" is now presented for the first time. The testimony establishes the fact that in several instances, the last in 1903, his disbursements for expenses were considerably less than the amounts he certified, which were uniformly \$10 per day. We think the law does not authorize the district judge, under such circumstances, to certify more than his actual disbursements as expenses. It does not authorize him to certify actual disbursements even unless they are "reasonable." Unexplained, there does not appear to be any justification for making these certificates and receiving the money appearing to be due thereon.

Evidence as to the alleged practice of other judges in this respect was offered and excluded, and we think properly. It would have been competent for him, when a witness in his own behalf, to have stated why he made those certificates. As a witness, he answered and explained every other charge. This charge he made no effort, as a witness, to answer or explain. The inference from the record, on general principles, is that the charge is admitted to be true, and that he has no answer or explanation thereto. Whether a satisfactory explanation can be made we do not say. We must take the record as it stands.

Upon this record, unanswered and unexplained, we are of the opinion that in this particular an impeachable offense has been made out.

RICHARD WAYNE PARKER.  
JOHN J. JENKINS.  
D. S. ALEXANDER.  
V. WARNER.  
C. E. LITTLEFIELD.  
LOT THOMAS.  
J. N. GILLETT.  
GEO. A. PEARRE.

### HOUSE OF REPRESENTATIVES, *December 13, 1904.*

[Congressional Record, volume 39, part 1, pages 214-249.]

Mr. PALMER. Mr. Speaker, the consideration of resolution No. 274, reported by the Committee on the Judiciary in the matter of the impeachment of Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, was postponed until the 13th day of December—

The SPEAKER. The gentlemen will suspend. The chair desires to hear the gentleman from Pennsylvania, and he is satisfied the House also desires to hear him, and the House will please be in order. Gentlemen will please be seated and cease conversation.

Mr. PALMER. This order was made on the 7th of April, and the time has arrived for the consideration of this resolution, and I move that the resolution be read.

The SPEAKER. The clerk will report the resolution.

The Clerk read as follows:

[H. Res. 274.]

*Resolved*, That Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached of high misdemeanor.

Mr. PALMER. Mr. Speaker, I propose to state in the briefest possible form the facts found by a majority of the Judiciary Committee from the testimony in the case, which justifies the conclusion that Charles Swayne, district judge of the United States in and for the



northern district of Florida, ought to be impeached by the House and sent before the Senate of the United States for trial. The acts of misbehavior proved by the evidence, briefly stated, are:

First, that the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, 1890 took the oath of office and assumed the duties of his appointment, whereupon it became and was the duty of the said Charles Swayne to comply with the act of Congress of the United States which provides that—

A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

Nevertheless, the said Charles Swayne, totally disregarding his duty as aforesaid, did not acquire a residence or, within the intent and meaning of said act, reside in his said district, to wit, the northern district of Florida, from the year 1894 to the year 1903, a period of about nine years.

Wherefore the said Charles Swayne, having persistently and continuously violated the aforesaid law, is guilty of a high misdemeanor.

Second, the said Charles Swayne, judge of the United States in and for the northern district of Florida, while in the exercise of his office as judge did knowingly, arbitrarily, and unjustly impose a fine of \$100 upon and commit to prison for a period of 10 days without authority of law E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States, to wit, at Pensacola, in the county of Escambia, in the State of Florida, on the 12th day of November, in the year 1901.

Wherefore the said Charles Swayne misbehaved himself in the office of judge, and was and is guilty of an abuse of his judicial power and of a high misdemeanor in office.

Third, the said Charles Swayne, judge of the United States in and for the northern district of Florida, while in the exercise of his office as judge did knowingly, arbitrarily, and unjustly impose a fine of \$100 upon and commit to prison for a period of 10 days without authority of law Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States, to wit, at Pensacola, in the county of Escambia, in the State of Florida, on the 12th day of November, in the year 1901.

Wherefore the said Charles Swayne misbehaved himself in his office of judge, and was and is guilty of an abuse of his judicial power and of a high misdemeanor in office.

Mr. TAWNEY. Will the gentleman allow me to ask him a question?

Mr. PALMER. Certainly.

Mr. TAWNEY. Was there any affirmative evidence showing the committee that Judge Swayne had a permanent residence outside of his district?

Mr. PALMER. Yes and no. The evidence states that when he left Pensacola he went to Guyencourt, Del., the evidence states that he generally told his clerk at Pensacola that he was going to Guyencourt, Del., when he left. The evidence was that he left word with the clerk that if anybody wanted to transact any business with him

they could do it at Guyencourt, Del. There was no testimony, and I do not think anybody undertook to prove where his residence actually was. It seemed to be sufficient to prove that his residence was not in Florida, as the act provides that he shall reside in Florida. It was of no particular consequence where he lived if he did not live there. He never voted in Florida; he never was registered in Florida; he never lived there in any proper sense of the term. The idea of the committee was that this act of Congress means what it says, that a man shall be bodily present in the place where he ought to be. A potential residence, a constructive residence, or a legal residence does not answer the purpose for which the act of Congress was passed. It meant that when a judge was appointed to a district he should be there to attend to the business of the people, and not 3,000 miles or 1,000 miles or any number of miles away. Of course, residence is a question of intention, but if a man could gain residence by intention, he might have gone to Florida and said: "It is my intention to live at the Escambia Hotel," or anywhere else, and then have gone to England and spent his time there, coming home when it was necessary to hold his court. But, as I said, I am not going to argue that question now.

Mr. BURKE. Will the gentleman permit a question at that point?

Mr. PALMER. Yes.

Mr. BURKE. What was done with the other attorney who, you say, went to New Orleans?

Mr. PALMER. Mr. Paquet came back some time later and filed a kind of statement in which he said that their conduct was such that Judge Swayne might presume they intended a contempt, whereupon Judge Swayne excused him, and he was neither fined nor imprisoned.

Fourth, the said Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, did, while in the exercise of his office as judge, without authority of law, commit to prison for a period of 60 days one W. C. O'Neal for an alleged contempt of the United States court for assaulting one Greenhut, who was trustee in a certain bankruptcy proceeding, the said assault having been committed out of the presence of the court and not so near thereto as to obstruct or hinder the administration of justice, and while the said court was not in session; neither was the said assault committed in defiance of any rule, command, or decree of the said court, to wit, at the city of Pensacola, in the county of Escambia, in the State of Florida, on the 9th day of December, 1902.

Wherefore the said Charles Swayne misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

Fifth, the said Charles Swayne, judge of the United States court in and for the northern district of Florida, did, while in the exercise of his authority as aforesaid appoint to the office of commissioner of the United States one B. C. Tunison, to wit, at the city of Pensacola, in the State of Florida, on or about the 1st day of July, 1897, who was at the time of such appointment, and is now, a man of bad character for truth and veracity, the character of said Tunison being well known to the said Charles Swayne at and before the time the said appointment was made.

Wherefore the said Charles Swayne brought the administration of justice into disrepute, and was, and is, guilty of misdemeanor in office.

Sixth, the said Charles Swayne, judge of the United States in and for the northern district of Florida, so conducted himself in his said office of judge as to beget and induce a general belief among the members of the bar practicing in his court and district, and among the suitors in the court of the United States in the northern district of Florida, that one B. C. Tunison had and could exercise undue and improper influence over him, the said Charles Swayne, and that on account of said influence it was advisable to employ the said Tunison to prosecute cases before the said Charles Swayne, and that the said Tunison was in fact employed in cases for that reason.

Wherefore the said Charles Swayne was and is guilty of misbehavior in office.

Seventh, the said Charles Swayne, while exercising the office of judge, to wit, at Pensacola, Fla., arbitrarily and unjustly refused to hear witnesses summoned and present in a pending case on the ground that he would not believe them if sworn, and continued without day, without any sufficient cause or reason, the said case to wit, of one W. H. Hoskins, an alleged bankrupt, whose property had been seized and who denied that he was insolvent, and in whose case an order had been made for a trial before a jury, to wit, on the 31st day of March, 1902, to the great injury of said Hoskins, the action of said Charles Swayne in the premises being a denial of justice, a violation of his official oath, and an abuse of his judicial power and a high misdemeanor in office.

Eighth, that the said Charles Swayne misbehaved himself in his office of judge of the United States court in and for the northern district of Florida in that the said Charles Swayne used the property of the Jacksonville, Tampa & Key West Railroad, to wit, a car belonging to the said company to transport himself, his family, and friends from Guyencourt, Del., to Jacksonville, Fla., the said car having been supplied with provisions and furnished with a conductor and porter and transported over other roads at the expense of said company. At the time the said property was used as aforesaid the said railroad was in the hands of a receiver appointed by the said Charles Swayne, judge of the District Court of the United States for the Northern District of Florida. The accounts of the said receiver, containing this expenditure as aforesaid, were passed upon and allowed by the said Charles Swayne.

The said Charles Swayne further misbehaved himself by attempting to justify the use of the property as aforesaid by claiming that he had a right to use it because the railroad and its property were in the hands of the court. [Laughter.]

Now, maybe you think that is a joke, but I want to read the testimony of Judge Swayne on that subject:

By Mr. PALMER:

Q. You said this car was one of the cars in possession of the court, because the road was in the hands of a receiver?—A. Yes.

Q. You said that it was the privilege of the court to use that car, because the road was in the hands of a receiver?—A. Yes; that was the reason why it was used.

Q. You thought that the railroad being in the hands of the court you had the right to use the property of the railroad without rendering the railroad any compensation

for it?—A. The receiver, in talking that over with me, stated that it was generally understood that a car was in better condition running than if it were standing idle on a siding.

[Laughter.]

I thought I was lawyer enough to see he had not answered it.

Mr. PALMER. Will the stenographer read that question, please?

The STENOGRAPHER (reading). "Q. You thought that the railroad being in the hands of the court you had the right to use the property of the railroad without rendering the railroad any compensation for it?"

Mr. PALMER. That is the question.

The WITNESS. Yes, sir. I had 10 railroads in my hands as judge in 6 years.

Mr. PARKER. Will the gentleman read the next question?

Mr. PALMER. Yes; you can read it for me.

Mr. GILLET of California. I will read it.

Q. And you fancied you had the right to use the property of any of the railroads that were in the hands of the court whenever you pleased without rendering any compensation to the railroad for it?—A. I did not say that.

Mr. PALMER. How does that qualify what he stated?

Mr. GILLET of California. That is what he said.

Mr. PALMER. He said he had the right to use that property, because it was in the hands of the receiver, because the railroad was in the hands of the court; that is what he said and stuck to it.

Mr. MANN. And he did it?

Mr. PALMER. He did.

Mr. RICHARDSON of Alabama. Will the gentleman allow me to ask if he charged up the expense against the receiver?

Mr. PALMER. The receiver took credit for it when he settled his account; of course he provisioned this car and put on a porter and conductor at the expense of this railroad company, and got the car passed over the different railroads between Jacksonville, Fla., and Guyencourt, Del. In other words, this man took out of the assets of the bankrupt company, which were in his hands or in the hands of the court, which he was bound to administer for the benefit of the creditors, several hundred dollars, because it costs about a hundred dollars a day to run a private car if a private person has to pay for provisions and transportation. He took a sum out of the assets of that company and applied it to his own use, the use of his family and friends. The car came to Guyencourt, Del., and took Judge Swayne and Judge Swayne's wife's sister and her husband and transferred them, at the expense of the railroad company, to Jacksonville, Fla.

Mr. GILBERT. Was it an inspection trip?

Mr. PALMER. Not of the Jacksonville, Tampa and Key West. He passed over two or three different railroads between Jacksonville and Guyencourt.

Mr. FINLEY. I thought he perhaps merely inspected the condition of the road.

Mr. PALMER. No.

The said Charles Swayne further misbehaved himself in that he used the car above mentioned to transport himself, his family, and friends from Jacksonville, Fla., to the Pacific slope, the said car, a porter, or cook, and some liquid supplies, and transportation over other roads having been furnished at the expense of the said railroad company. The said Charles Swayne also justified the use of the said car upon the grounds aforesaid.

I do not think it necessary to make any further comment on that subject.

That the said Charles Swayne has been guilty of a high misdemeanor viz, in obtaining money from the Treasury of the United States by a false pretense.

The said Charles Swayne was entitled by law to be paid his reasonable expenses incurred in travel and attendance when holding court outside of the northern district of Florida, not to exceed \$10 per diem, to be paid upon his certificate by the United States marshal of the district in which the court was held, and was forbidden by law to receive any compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were \$10 per diem while holding court at Tyler, Tex., 41 days from January 21, 1903, and received therefor from the Treasury of the United States, by the hand of the United States marshal, the sum of \$410, when the reasonable expenses of the said Charles Swayne, incurred and paid by him during said period, were much less than said sum, total for board and lodging, the sum of \$1.25 per diem, amounting to \$51.25, and for traveling expenses in going and returning from the said court, not to exceed \$50, in all \$101.25.

Mr. LACEY. I would like to ask the gentleman a question in this connection. Does he have a copy of any of the certifications complained of here? They do not seem to be printed in the record.

Mr. PALMER. I have a copy of the certificate.

Mr. LACEY. I would like to ask what the form of certificate was that he is charged with misstating the facts?

Mr. PALMER. He certified that he had expended the sum of \$10 a day, or some \$400 for 40 days, for necessary expenses of attendance and travel. That is the form of certificate. It is a printed form that is used in the department. The certificate was not put in the evidence because counsel for Judge Swayne admitted he had made use of the regular legal certificates in all these cases.

Mr. LACEY. Is this the usual certificate used by any district judge—the printed blank furnished by the Treasury Department?

Mr. PALMER. They have a printed form, and every judge has to certify how much his reasonable expenses for travel and attendance are—not his actual expenses; it is his reasonable expenses—and it turned out that Judge Swayne held court out of his district 745 days in the eight years, and that he charged \$10 a day for every day; that is to say, he received \$7,450 for holding court outside of his district as expenses, and he received close to a thousand dollars a year over and above his salary.

The same charge was made against him where he held court at Tyler, Tex., where the charge was for \$310 expended. According to the testimony, he paid \$77.50 for lodging; \$50 for traveling expenses, which would cover from Pensacola; in all, \$127.50. In one case he got a rebate on his board bill of 10 or 15 per cent. The usual charge was \$2.50 a day, or something like that, and in the certificate he put in a bill of \$110, which was paid for \$97.

Mr. ADAMS of Pennsylvania. Will my colleague permit me to ask him a question?

Mr. PALMER. Certainly.



Mr. ADAMS of Pennsylvania. Does the gentleman know if it is customary among United States judges to charge the maximum?

Mr. PALMER. No, sir; and if it was customary, that would be no evidence in this case. We are trying the case of Charles Swayne—not other judges.

Mr. ADAMS of Pennsylvania. I am only asking for information.

Mr. PALMER. And I am giving it to you. [Laughter and applause.]

Mr. LACEY. I would like to ask whether there is any testimony before the committee showing that this statute is construed that there should be \$10 allowed for reasonable expenses and attendance, and it is fixed as not beyond \$10? The word used, "attendance," so far as the expense was concerned, was not that part of the compensation for holding the court?

Mr. PALMER. What do you mean?

Mr. LACEY. That \$10 meant that it covered compensation. Is not that the construction that is put upon it?

Mr. PALMER. No, sir.

Mr. OLMSTED. Does not the act also say that he shall have no compensation for holding the court out of his district?

Mr. PALMER. The act of Congress forbids a judge from receiving any compensation for holding court out of his district. He is paid a salary for his services.

Mr. LACEY. I only wanted to see how it is construed by others.

Mr. PALMER. The act provides that they shall not get any other compensation.

Mr. LACEY. It was passed on an appropriation bill, and is for traveling expenses and attendance.

Mr. PALMER. It is for "reasonable expenses of travel and attendance." That was limited formerly by the act of 1881, which was construed to give "actual expenses," but this act gives him his "reasonable expenses."

Mr. OLMSTED. I will ask my colleague whether instead of the act providing, as the gentleman from Iowa said, that the charge is for "attendance," it is expressly stated for "reasonable expenses of his attendance?"

Mr. PALMER. The act of 1896, the sundry civil appropriation bill, provides for—

Reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed ten dollars per day each, to be paid on written certificates of the judges.

Mr. HITCHCOCK. The gentlemen on this side of the House would like to ask the gentleman from Pennsylvania if he would talk a little louder, so that he can be heard.

Mr. PALMER. If the gentlemen on that side will keep a little stiller, I think I could be heard.

Mr. HITCHCOCK. It is not a question of keeping a little stiller, but of the gentleman talking a little louder.

Mr. PALMER. If the House will keep a little stiller, I will try to talk a little louder.

The judge must certify, under that statute, before he can get the money from the marshal, what his reasonable expenses have been for traveling and attendance.

Mr. LACEY. Now, I will ask the gentleman if in the same district and in the same circuit it has been the uniform practice of the other judges to charge the fixed sum, this \$10 a day; so that if we are going to impeach this man for that, why, the House ought to have a job lot of impeachments, covering the whole district or circuit. I will ask whether the committee looked into that.

Mr. PALMER. No; we didn't look into it, and we didn't need to; it would not have been relevant or competent; when one man is charged with larceny, it is not relevant to see if somebody else has been guilty of the same thing. This is briefly the plain statute, and if a judge will certify that his expenses have been \$10 a day and he has paid \$10 per day then he is entitled to it, and if he hasn't paid that he is not entitled to it.

Mr. CLAYTON. Will the gentleman permit me, in that connection to refer him to the case of *Dunwoodie against The United States* (22 C. Cls., 269, 278), where it was held:

"Expenses," as used in an act appropriating money for salaries and expenses of the national board of health, means those expenses which are necessarily incident to the work directed to be done, including payment for clerk hire or office rent.

And in *Heublein v. City of New Haven* (54 Atl., 298, 299; 75 Conn. 545), where it was held that:

The word "expenses," as used in a city charter providing that the selectmen shall receive a certain sum per hour for the time spent in their duties, and their necessary expenses, means something due to the selectman for money paid by him or debt incurred by him necessarily in the performance of his duty.

And also in the case of *the United States v. Shields* (153 U. S. Rep., p. 91), where it is said:

It is true in the present case that the district attorney has made no claim for a per diem allowance for Sunday, but it certainly can not be held that this left it optional with him to waive his per diem fee and take mileage to and from his home in lieu thereof as a matter of pleasure or convenience to himself, especially when the mileage exceeded the per diem allowance. Fees allowed to public officers are matters of strict law, depending upon the very provisions of the statute. They are not open to equitable construction by the courts nor to any discretionary action on the part of the officials.

Mr. PALMER. Tenth, that the said Charles Swayne has been guilty of a high misdemeanor in obtaining money from the Treasury of the United States by a false pretense, in that the said Charles Swayne was entitled by law to be paid his reasonable expenses incurred in travel and attendance when holding court outside of the northern district of Florida, not to exceed \$10 per diem, to be paid upon his certificate by the United States marshal of the district in which the court was held and was forbidden by law to receive any compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were \$10 per diem while holding court at Dallas, Tex., 40 days from January 21, 1896, and received therefor from the Treasury of the United States, by the hand of the United States marshal, the sum of \$400, when his reasonable expenses incurred and paid by the said Charles Swayne did not exceed \$125 for board, lodging, laundry, express, telegrams, and drugs, and not to exceed the sum of \$50 for traveling expenses in going and returning; in all, the sum of \$175.25.

Eleventh, that the said Charles Swayne has been guilty of a high misdemeanor in obtaining money from the Treasury of the United States by a false pretense.

The said Charles Swayne was entitled by law to be paid his reasonable expenses incurred in travel and attendance when holding court outside of the northern district of Florida, not to exceed \$10 per diem, to be paid upon his certificate by the United States marshal for the district in which the court was held, and was forbidden by law to receive compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were \$10 per diem while holding court at Tyler, Tex., 31 days from December 3, 1900, and received therefor from the Treasury of the United States, by the hand of the United States marshal, the sum of \$310, when the reasonable expenses incurred and paid by the said Charles Swayne did not exceed \$2.50 per diem for board and lodging, amounting to \$77.50, and \$50 for traveling expenses going and returning, not to exceed \$127.50 in all.

In support of the first charge, viz, that Judge Swayne violated the act of Congress which makes it a high misdemeanor for a district judge not to reside in his district, the testimony shows that Judge Charles Swayne was appointed district judge of the United States for the northern district of Florida in 1890. At that time the boundaries of the district included St. Augustine, where he resided. In the year 1894 the boundaries of the district were changed by an act of Congress, and St. Augustine and Jacksonville were included in the southern district, leaving Pensacola and Tallahassee as the only places at which a United States court was held in the northern district.

From the time the boundaries of the northern district were changed until the year 1903 Judge Charles Swayne boarded at hotels or boarding houses in Pensacola and Tallahassee during the times his court was in session, except a portion of the year 1900, about two or three months, when he lived with his family in Pensacola, in a house rented by his wife. The testimony establishes the fact that substantially he was not in the district at any other time except when his court was in session. From 1896 to 1904 his court was open for business 492 days, being the average of  $61\frac{1}{2}$  days per annum for 8 years. No testimony was offered to show how many days the court was open or closed during the years 1894 and 1895.

In the year 1903 his wife purchased a house in Pensacola. There is no evidence that he has occupied it, or that he has ever been registered, paid taxes, or voted in the northern district of Florida since the boundaries of the district were changed, or that his family has been there, except a part of one winter.

Upon the part of Judge Swayne, a witness testified that he had, at the request of Judge Swayne, endeavored at different times between 1894 and 1903 to find a suitable house in Pensacola which he could purchase, and at one time endeavored to get a house built for him, but that he had not succeeded in either effort.

Judge Swayne testified that when he first went to Pensacola he asked a man connected with a bank to have his name placed on the registry. It was not done. Judge Swayne admitted that he never was registered in the northern district of Florida, never paid

a tax, voted, or in any manner exercised the rights of citizenship. After making the request of a person not connected with the registration of voters, he never inquired to find if it had been done. He stated to at least one person that his home was at Guyencourt, Del.; that was the place where he went when court was not in session in Florida, or when he was not holding court in other States.

From the testimony in the case it is clear that Judge Swayne has never acquired a legal residence in the northern district of Florida, nor has he actually resided there, within the meaning of the act of Congress, which is as follows:

A district judge shall be appointed for each district, except in the cases hereinafter provided. Every such judge shall reside in the district for which he is appointed, and for offending against this provision shall be guilty of a high misdemeanor.

This act needs no interpretation. Its purpose is plain. A non-resident judge can not perform the duties of his office properly or rightfully administer justice to the people of his district. Whether he can or not, the law requires him to live there, and makes him guilty of a high misdemeanor if he does not obey it. There is sufficient evidence, if evidence were needed, to satisfy your committee that the continued absence of Judge Swayne subjected lawyers and suitors to inconvenience, delay, and expense, and in some cases amounted to a denial of justice. Let it be granted that there is not; let us suppose that no one suffered harm. We do not find that Judge Swayne is therefore to be excused from obeying the law. No exception is contained in the act; we can not write one in for his benefit.

Judge Swayne does not claim that he had a residence in his district from 1894 to 1903. His testimony is rather in the nature of a series of excuses for not having it. He says he authorized his clerk to look for a house in Pensacola; that he spoke to a bank cashier about being registered; that he was always ready to go back to his district when needed; that he was called to hold court elsewhere; that other southern judges go North in the summer season. All this does not excuse Judge Swayne for noncompliance with a highly penal statute. It ill becomes a judge to set up excuses for disobeying the law. After the Florida Legislature had acted and passed the condemnatory resolution upon which this proceeding is founded, he apparently awoke to the fact that his plain duty in respect to residing in the district had been neglected. His wife purchased a house in Pensacola. The evidence does not show that he ever even lived in that house. This statute is as binding upon Judge Swayne as any other law upon the statute book. If he may violate this act with impunity, he ought to be allowed exemption from obedience to all laws.

It may be conceded that residence is ordinarily a question of intention. A man's legal residence is, doubtless, where, after having gained a residence, he intends to reside. But in order to comply with this statute we submit that there must be something more than an intention on the part of a judge to reside in his district. There must be an actual as well as a legal residence. One may establish and have a legal residence in the United States and remain continuously abroad any number of consecutive years without losing it; but such a constructive or legal residence certainly would not answer

the purpose of this statute, which clearly was to secure the bodily presence of the judge within his district, where the people who had need of his official services could have them.

It has been said that the word "residence" is an elastic term of which an exhaustive definition can not be given, but that it must be construed in every case in accordance with the object and intent of the statute in which it occurs. (Eng. and Am. Enc., p. 696.)

It may happen that one may have two places of residence, in one of which he resides during one portion of the year, in the other during the remaining portion. In such case the place where he happens to be constitutes his residence so long as he is there, and ceases to be such as soon as he leaves for the other place. (Ibid., 699. *Walcott v. Bolfield*, 1 Kay, 534; 18 Jurist, 570; *Stout v. Leonard*, 37 N. J. L., 492.)

In the case of *The People v. Owen* (29 Colo., 535) it was held that when a statute requires a district judge to reside in his district the residence contemplated was an actual as distinguished from a legal or constructive residence.

Judge Swayne offered himself as a witness upon this question after the committee came to Washington after visiting Florida. He was sworn, and his testimony was as follows:

Mr. PALMER. Judge Swayne will proceed and will make his statement to the stenographer.

Judge SWAYNE. I was born in 1842 in Delaware, and resided there with my parents. I read law in Philadelphia and was admitted to the bar and took my degree of B. A. in the Pennsylvania Law School. I practiced law there, with the exception of one year, until 1885, when I removed with my family to Sanford, Fla. I practiced law there until 1887, when I was burned out, when I removed with my family to the county seat, where I was residing when appointed to the bench on May 17, 1889. I took the oath of office June 1, 1889.

Mr. PALMER. That was a recess appointment, was it not?

Judge SWAYNE. Yes, sir; I can not tell positively what date I was confirmed. The confirmation came up before Congress the following December, and in consequence of the election trials, which had taken place in the meantime, the confirmation did not occur until April 1, 1890. I addressed the Senate on the subject, which can be seen by the Congressional Record of the first session of the Fifty-first Congress, volume 21, February 21, 1890, and which was a very interesting debate, showing exactly what the questions were. In the summer of 1890 I moved to St. Augustine. I think we arrived there the 1st of October, having been North on a vacation, as was the custom of most of the Federal judges, perhaps of all of them, to take such vacations.

I resided in St. Augustine with my family, and about the time when the bill making the change in the district which has been spoken of received President Cleveland's signature, after a consultation with my friends in Jacksonville and vicinity, they urged me not to move my furniture nor my family, saying that the next Congress would be Republican and the district would be placed back in its usual form. My furniture was allowed to remain, and I went at once to Pensacola. I found a leading Democratic friend there, and I stated to him that I had concluded not to move my furniture there, and it was all well understood by the people there. I was there for a considerable period, sometimes early in October and sometimes a little later, and I was there all the time I was needed unless holding court somewhere else. By special assignment for five months I was in the court at Dallas. In 1890, in July, I went with my family to Europe. In the spring, in 1900, I was holding court at Birmingham, where I had a great many friends, and after that I went to Pensacola and rented a house.

Mr. GILLET. Was that in 1890?

Judge SWAYNE. That was in 1900. I think I moved there early in October. I then went North with my wife and son to spend Christmas week in Wilmington. On the 12th of the following January I was in Tyler, Tex., and two days later I got a telegram about the breaking down of my son's health, but I stayed on until February and finished the case and then came back, as his condition was very critical and serious, and, after a week or two, perhaps, I returned and held court and finished what I had to do and got back to Delaware that spring. In February, 1903, I was again in Tyler, Tex., and went early to Wilmington. In the spring we bought the property that



had been formerly occupied by Judge A. C. Blount, in Pensacola, and moved in it the 1st of October.

I never was a registered voter and I have not voted in 14 years. When I left Delaware I moved my domicile and have taken no part in political questions arising in the State of Delaware or Florida. Mr. Turner, whom Mr. Laney said he did not know, was an attorney for my matters for four years. My father died in 1889 and left property to my mother for life. She is still living, and the property comes to me and my sister as a residuary legatee at the time of her death. But that has never been my home, but I have spent my summers there mostly, arriving sometimes in June and sometimes in July, and from that point I could always reach Pensacola in 36 hours, and the record will show I have always been there to attend to anything of a serious nature.

My recollection is that no one has ever suffered because of my absence, and I can offer testimony which will entirely clear up that proposition. My recollection is that, from the testimony taken, the most the committee has on this point before them is that counsel may have been sometimes inconvenienced in the summertime during my absence on vacation. As near as I can recollect, these are the facts which cover the period since I have been on the bench.

Mr. GILLET. Did the business of the court suffer because of your absence?

Judge SWAYNE. I never heard of it.

Mr. GILLET. The summertime was the time usually taken for vacations?

Judge SWAYNE. Yes; I so understand it. Another suggestion was that the only way to get rid of me would be to do away with the district entirely. But I do not suppose the parties care very much whether the office is abolished or not, just so long as they can get the individual.

Bearing in mind that Judge Swayne is presumed to be learned in the law, and that he is fully aware of what is needful to enable a man to gain a legal residence and also to maintain an actual residence in a given place, it is apparent that he does not claim that, prior to 1903, he had either gained a legal or maintained an actual residence in the northern district of Florida. His testimony is prolific of reasons why he did not do so.

Apparently he had an actual and legal residence in St. Augustine, which was in his district before the boundaries were changed. After that event he broke up housekeeping and stored his furniture, then being advised, as he states, by some of his friends that the next or some succeeding Congress would be Republican and that the boundaries of his district would be extended. After that he attended the session of his court at Pensacola and Tallahassee, living at different boarding houses or hotels, being present substantially at no time except when court was in session. When he left Florida he states that he always left directions with his clerk that he would come back if needed. Correspondence was addressed to him at Guyencourt, Del.; that place he spoke of as his home. To that place he returned when his labors in his district were ended or after he concluded terms of court in other States. He had live stock and personal property at Guyencourt, in Delaware. His family generally lived there; sometimes abroad. In the year 1900 his wife rented a house in Pensacola and lived there with her husband a portion of the winter, going North with him about the holidays. Rent was paid for the house a year or more, but it was not again occupied by him or his family. He spoke to a bank cashier about being registered, but the bank cashier had nothing to do with the registration; that was an act which, under the law, must be attended to personally.

Judge Swayne never was registered. When there, did he gain even a legal residence in the northern district of Florida? Has he ever gained such a residence? His actual residence was measured

by about 60 days in each year. Did he gain a legal residence when he broke up housekeeping and stored his furniture awaiting the time when a Republican Congress would change the boundaries of his district, so that he would not need to move away from St. Augustine? Did he gain a legal residence when he asked the bank cashier about being put on the register of voters? Asking his clerk to find a suitable home for him to rent or purchase evidenced his intention to reside in Pensacola when such a house was found. It did not gain a residence for him while the fruitless search progressed. It may be gathered from Judge Swayne's testimony that he intended to reside in Pensacola some time when he could buy or build a house.

There was no place in the northern district of Florida where legal service of process could have been made on Judge Swayne during the 10 months of each year when he was absent from the State. The fact that Judge Swayne held court in other States, being assigned to do so by the circuit judge, does not tend to show that he had or had not a residence in his district. If to be present in the district during the time necessarily spent in holding the terms of court fixed by law, in March and November of each year, was to reside in the northern district of Florida, within the meaning of the act that requires a judge to reside in his district, under penalty of being guilty of a high misdemeanor if he does not, then Judge Swayne has complied with the law and is not subject to be charged on that ground. If he has persistently and continuously evaded and refused to obey this law, according to its plain intent, as the committee find from the testimony, then he should be impeached and sent before the triers.

Your committee can see no reason for overlooking or excusing his default. The law itself measures the grade of Judge Swayne's offense. It is a high misdemeanor. For that, by the express words of the Constitution, he is impeachable. It is not for the House of Representatives to seek for excuses exonerating a judge for a plain violation of statutory law, but to charge him before the tribunal fixed for the trial and let him abide the consequences of his act. If the Senate chooses to regard his excuses and exempt him from just punishment, the House will have done its duty to the people, and responsibility for miscarriage of justice will rest elsewhere.

In support of the second and third charges, viz, that Judge Swayne arbitrarily, unjustly, and unlawfully fined and imprisoned E. T. Davis and Simeon Belden, attorneys at law, the facts of the cases, as set forth by the testimony, are as follows:

In the year 1901 an action of ejectment was pending in the circuit court of the United States at Pensacola, in which Florida McGuire was plaintiff, and the Pensacola City Co., and numerous individuals, among them W. A. Blount and W. Fisher, attorneys at law, were defendants for a tract of land called the "Rivas or Chavaux tract." The plaintiff's lawyers were Louis Paquet and Simeon Belden, of New Orleans. In the month of October, in the year 1901, Paquet and Belden joined in a letter to Judge Swayne, which they addressed to him at the place where he resides when not holding court in his district or elsewhere—viz, Guyencourt, in the State of Delaware—stating that they had been informed that he, the said Charles Swayne, had purchased a portion of the land in controversy in the said eject-

ment suit—viz, block 91, in the business part of the city of Pensacola—and requesting him to recuse himself and arrange for some other judge to preside at the trial of the case. To this letter no answer was returned by Judge Swayne.

At the term of court which convened at Pensacola in November, Judge Swayne announced, on the 5th of November, that a relative of his had purchased the land, but later in the week he volunteered from the bench that the relative was his wife, and that she had purchased the land with money obtained from her father's estate; that the bargain had not been concluded for the reason that the owner, Mr. Edgar, offered a quitclaim deed. The evidence shows that the agents of Edgar with whom Judge Swayne negotiated the purchase of block 91, and also of another lot, wrote him stating that Edgar would not give a general warranty because the land was part of a tract which was in dispute. Swayne answered saying that they might drop out block 91 without stating a reason. The agents had pending, in October, when the letter to Swayne was written, a suit in the State court against Edgar for commission on the sale to Swayne. The agents had taken Judge Swayne over the track, and had agreed upon the terms and had sold block 91 to him.

The custom in Judge Swayne's court was to dispose of the criminal calendar first, and when that was concluded to call the civil list and set the cases for trial at convenient times in the future. The criminal cases were not concluded at the November, 1901, session until about 5 o'clock Saturday night. Judge Swayne then took up the civil list, upon which the case of Florida McGuire appeared, and made a further statement that the member of his family who had contracted through him for block 91 was his wife, and that she was purchasing with money derived from her father's estate. He declined to recuse himself, and stated that the case would be heard on the Monday following unless legal ground for continuance was laid.

The plaintiff's lawyer, Paquet, asked that the case should be set down for Thursday of the following week, averring that it was too late to summon witnesses that night; that Sunday they could not be summoned, and therefore the case could not be ready on Monday. This request was refused by Judge Swayne, who insisted that the case should go on on Monday. At about 5.30 or 6 o'clock the court adjourned. Neither Simeon Belden nor E. T. Davis was present in court at any time when Judge Swayne made announcement concerning his connection with the purchase of block 91, Belden being ill with facial paralysis and confined to his bed at the hotel in Pensacola. E. T. Davis was not of counsel in the case, and had no connection with it up to the time that court adjourned on Saturday, November 9, at 6 o'clock. During the evening Paquet drew up the necessary papers to commence an action of ejectment in the county court of Escambia County, Fla., against Judge Swayne for this block 91, upon the theory that he had contracted for the land with Edgar, who claimed to own it, and who had admitted that he was in possession and that the contract was subsisting between them, and that the title of the alleged owner could be tried out in the State court, where the parties would get better justice, Swayne standing in the shoes of Edgar. They took the liberty of believing, from all the evidence,

that Judge Swayne was the real purchaser, though he had said that the title was to be taken by his wife.

The papers were taken to Simeon Belden at his hotel where he was ill, and he signed them. E. T. Davis was employed to bring this suit. At the same time it was agreed that the suit of Florida McGuire, in Judge Swayne's court, should be dismissed on Monday. Davis was engaged to do it, Paquet having been called to New Orleans by sickness in his family. The suit against Judge Swayne was brought that Saturday night and the process served on him. On Monday, at the opening of the court, Mr. E. T. Davis asked for and obtained from Judge Swayne an order dismissing the suit of Florida McGuire. Immediately Mr. W. A. Blount, esq., one of the defendants, and also attorney for defendants, arose and suggested that Paquet and Belden, attorneys for Florida McGuire, and Davis, who appeared to ask for a dismissal of the suit, had been guilty of contempt of court for bringing suit against Judge Swayne in the county court of Escambia County. This action was in pursuance of a previous conference between Blount and Swayne held before court convened, when it was agreed upon. Judge Swayne ordered a rule to show cause upon an unsworn statement prepared by Blount, which was served on Davis and Belden, Paquet being absent. The next day (Tuesday) Davis and Belden appeared and submitted an answer purging themselves of the contempt and averring their right, as counsel, to bring the suit.

Some testimony was taken to show that the suit against Judge Swayne had been brought and process served on him Saturday night about 8 o'clock; that was all. Whereupon Judge Swayne proceeded to adjudge Belden and Davis guilty of the "charges which were in violation of the dignity and good order of the said court and a contempt thereof," and after some abusive remarks sentenced them to be disbarred for the term of two years, to pay a fine of \$100 each, and to undergo an imprisonment for the period of 10 days in the county jail.

They were duly committed and remained confined three days, when they were released pending a habeas corpus allowed by Judge Pardee, of the circuit court. That habeas corpus case resulted in a decision that Judge Swayne had jurisdiction of Belden and Davis in a contempt proceeding, as the averment in the paper filed by Blount was that they were officers of the court, and therefore the circuit court could not question his decision, his findings of fact, or the correctness of his judgment that they had committed a contempt, except in so far as he had exceeded his jurisdiction by imposing both fine and imprisonment, the statutes providing in certain cases for fine or imprisonment as a punishment for contempt. To that extent the decision of Judge Swayne was reversed and the culprits allowed to choose which they would suffer, fine or imprisonment. Belden, who was a very sick man, about 70 years of age, chose to serve out his sentence in prison; Davis paid the fine of \$100.

I am of opinion that Judge Swayne was guilty of gross abuse of judicial power and misbehavior in office in this case. I believe that he had no authority or right to adjudge Simon Belden and E. F. Davis guilty of a contempt of court under the circumstances of the case.

Second. That if authority can be found in the law for holding the action of these attorneys a contempt, that in the absence of evidence

of intent to commit a contempt other than that to be gathered from the fact that the suit was brought Saturday night and the process served the same night, and in the face of their answer that no contempt was thought of or intended, to adjudge them guilty was a gross abuse of power.

Third. That the sentence imposed by Judge Swayne was unauthorized and unlawful. It can be accounted for only on the theory that the judge imposing it was ignorant or vindictive.

The statute conferring power upon the court of the United States is as follows:

The said courts shall have power to impose and administer all necessary oaths and to punish by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempt shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said court.

In his address to the subcommittee Judge Swayne was asked to point out the part of the statute which conferred the authority for his action. He said: "The words 'the misbehavior of any of the officers of the said courts in their official transactions.'"

At the time he sentenced Davis and Belden Judge Swayne declared that the contempt did not consist in bringing the suit in the State court; that the attorneys had a perfect right to sue him there, but that his belief was that the suit was brought to force him to recuse himself in the case of Florida McGuire.

It must be remembered that at the time the sentence was pronounced, indeed, before the contempt proceeding was commenced, the case of Florida McGuire had been ended by the consent of Judge Swayne, upon motion of E. T. Davis, for the plaintiff, and that the agreement to end the case had been reached by the lawyers, Paquet, Davis, and Belden, before the suit was instituted against Swayne in the State court on Saturday. How, then, could their action in bringing that suit be construed into an attempt to force Judge Swayne to recuse himself in the case of Florida McGuire? Such a pretense was idle, especially in view of the fact that the purpose to arrest and punish these men for contempt of court had been formed and agreed upon between Blount and Swayne in the morning before court met and before either could know that the Florida McGuire case was to be dismissed by the plaintiffs. The accused lawyers had a right to bring the suit. Their motive could not have been to affect in any way the disposition of the Florida McGuire case in Judge Swayne's court, because that case being ended could not be affected or the conduct of the judge influenced thereby.

There was no testimony before the court from which a conclusion as to the motives of the accused could be judged except the fact that the suit had been brought in the State court Saturday night and the process served that night. The fact, viz, that the process was served Saturday night was, in Judge Swayne's eyes, according to his statement before the committee, the chief gravamen of the offense. From that fact he concluded that the motive of the accused was to "insult the dignity and disturb the good order of his court." The committee



is of opinion that there was no evidence before Judge Swayne from which such a motive could be inferred, certainly not from the facts in evidence before him.

The words under which he claims the right to condemn have been quoted, but they do not fit the case. They are the "misbehavior of any of the officers of the said courts in their official transactions." The act complained of was not done by these men as officers of the district court of the United States. They were acting as officers of the court of Escambia County, Fla., in bringing the suit. Therefore the action was not susceptible of being construed as a contempt of the district court. It was not an official transaction in any sense by officers of the United States court. Their character as officers or attorneys of that court gave them no power to do the act complained of. It was only because they were attorneys of the court in which the suit was brought that they could do it.

If it was an "official transaction," it was an official transaction in the county court of Escambia County, not in the district court of the United States. Certainly no one will contend that Judge Swayne could punish them for an official transaction in another court, no matter how offensive it might be to his dignity or humiliating to his pride or disgracing to his character; certainly such an act could not offend against the "dignity or good order of his court."

If, then, they could not be properly fined and imprisoned for bringing the suit, what offense did they commit that warranted such severe and disgracing punishment?

But it may be contended no judge can be held responsible for a mistake of law. All judges make mistakes. For an error of judgment or wrong exercise of discretion a judge ought not to be and can not be punished. Let this contention be granted. At the same time, none can dispute that for a misbehavior in office a judge may be impeached.

All the cases that have been tried may be cited as proof of that proposition.

Judge Pickering was impeached by the House and convicted by the Senate for releasing the ship *Eliza* to her owner without taking a bond after she had been seized for violating the excise law, and for appearing upon the bench when drunk, and for using profane language.

Judge Addison was impeached and removed from office for refusing to allow an associate judge to address a grand jury and a petit jury.

Judge Chase was impeached for refusing to allow counsel to address the court and jury upon a point of law that had already been decided.

Judge Peck was impeached for disbarring and imprisoning a lawyer who wrote and published a criticism of one of his opinions.

In all these cases the defense was stoutly made that they were mere mistakes of law, not indictable, and therefore not subject for impeachment. It did not avail to prevent the House from preferring charges. If this reason is good, then no judge can be called to answer for a misbehavior in office which is not also an indictable offense. This is not the law nor the practice.

In imposing sentence upon Davis and Belden Judge Swayne exceeded his authority by imposing both fine and imprisonment.

This error was set right by Judge Pardee, the circuit judge, but not until both had served three days in the common jail.

The animus and evil intent of the judge was manifest by his action and speech. So eager was he to punish that he disbarred these lawyers for a term of two years. If his amicus curia, Blount, had not warned him, that unlawful sentence would have remained. His speech when imposing sentence is described by the witness.

Simeon Belden testifies:

Q. Now, I will ask you what was the manner of Judge Swayne when he was inflicting this penalty?—A. Well, it was gross and offensive; he entered with a slanderous attack on the attorneys.

Q. Very slanderous?—A. Yes.

Q. Tell what he said.—A. I don't recollect his words exactly; it was published in the newspapers here.

Q. It was harsh and offensive?—A. Very, indeed. (P. 264–265.)

E. T. Davis, page 284:

Q. At the time of imposing this sentence, what was Judge Swayne's manner?—A. Very abusive.

Q. Can you state what he said?—A. I don't know that I can state it in so many words. He called us ignorant, said our action was a stench in the nostrils of the people, and a good many other things I can not repeat.

Q. His manner was very harsh and abusive?—A. Extremely so.

For a constructive or indirect contempt it is the law that one charged may purge himself, and that he can not thereafter be punished. In this case Judge Swayne listened to no excuse. He found an evil motive for a lawful action without evidence and against the oath of the accused. The excessive and unlawful character of the sentence and the grossly offensive manner in which it was pronounced leave no room for doubt that Judge Swayne was not animated by a desire to protect the dignity and good order of his court, but to punish what he considered a personal affront to himself. This constituted an arbitrary, unlawful, and oppressive abuse of his judicial power and a high misdemeanor in office.

The fact can not be disputed that Judge Swayne imposed a punishment on Davis and Belden which the law did not warrant. The only question in the case, then, is whether he is to be excused and go unpunished on the ground that he made an innocent mistake of law. No one doubts the proposition that a judge can not and ought not to be held responsible for innocent mistakes of law. Neither can anyone justly contend that a judge should not be punished according to law for knowingly and willfully imposing an illegal sentence. Whether his motive be revenge, or mere wanton disposition to exercise arbitrary power, or an intention to punish for a personal insult, in either case he can not be held guiltless or excused on the plea that he innocently erred.

The great question, then, in every case that arises must be, Why did he do it? What motive prompted? What intent animated? Being a human being and not divine or infallible, the actions of a judge are to be interpreted by the same rules that apply to the actions of other men. It is not to be supposed that a judge who evilly intends to do an unlawful act will declare his intention or publish his purpose. The motive and the intention of a judge must therefore be sought, and generally will be made plain by the circumstances surrounding the particular case. If a judge has no personal interest or feeling in a matter under consideration, if coolly, calmly, and with delibera-

tion he reasons himself into giving a wrong judgment, a wrong motive is never or rarely ever attributed to him. On the other hand, if the case involves a question of insulted dignity, a personal affront, or, if with heat and passion, if with vituperation and denunciation, a judge imposes a harsh and unlawful sentence upon a prisoner, his motive is not a matter of doubt. His motive is as plain as that of a man who assaults with a deadly weapon. Such a man is held responsible for the natural and reasonable consequence of his act. He can not be heard to say, "I made a mistake; I thought I had a right to strike with a club a blow which produced death." The law pronounces a layman and a judge who knowingly does an unlawful act conclusively guilty of an unlawful intent.

Apply these principles to the case in hand. Judge Swayne knew that the act of 1831 limited the powers of United States courts over contempt to the special cases named in the act. He knew it, because the Supreme Court of the United States has many times decided the very point, notably in 19 Wallace, 511, where it is said:

The act of 1831 is therefore to them (the district courts) the law specifying the cases in which summary punishments for contempt may be inflicted. It limits the power of these courts in this respect to three classes of cases—

First. Where there has been misbehavior of a person in the presence of the court, or so near thereto as to obstruct the administration of justice;

Second. Where there has been misbehavior of any officer of the court in his official transaction; and

Third. Where there has been disobedience or resistance by any officer, party, juror, witness, or other person to any lawful process, order, rule, decree, or command of the courts. And thus seen, the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgment, and processes.

Presuming that Judge Swayne knew the law, he knew that proceeding for a contempt not committed in the presence of the court must be founded on an affidavit setting forth the facts and circumstances constituting the alleged contempt, sworn to by the aggrieved party or some other person who witnessed the offense. Unless such affidavit be presented process will not be granted. (*Burke v. The State*, 47 Ind., 528; *Batchelder v. Moore*, 42 Cal., 412; *Rapalje on Contempts*, p. 122.)

The most common and, in the United States, the almost universal practice in this matter is to present to the court an affidavit setting forth the facts and circumstances constituting the alleged contempt sworn to by the aggrieved party or some other person who witnessed the offense. Unless such affidavit be presented process will not be granted. (*Burke v. State*, 47 Ind., 528; *Re Judson*, 3 Blatch., U. S., 148; *Batchelder v. Moore*, 42 Cal., 412; *Whittem v. State*, 36 Ind., 196.)

Judge Swayne knew that issuing of process without filing the proper affidavit was erroneous and that the error is not cured by a subsequent filing thereof. (*Wilson v. The Territory*, 1 Wyo., 155; *Whittem v. The State*, 36 Ind., 196; *McConnell v. The State*, 46 Ind., 298.)

He knew that in a rule to show cause why a person shall not be punished for contempt the actual intention of the respondent is material, in which respect it differs from an indictment for the like offense. Therefore, when the respondent meets the words of the rule by disavowing, upon oath, any intention of committing in contempt of court the rule must be discharged. (63 N. C., 397.)

He knew that the practice in the courts of the United States, as well as in the State courts, was:

If the party purge himself on oath the court will not hear collateral evidence for the purpose of impeaching his testimony and proceeding against him for contempt, but if perjury appear the party will be recognized to answer. (U. S. v. Dodge, 2 Gall., 313 Circuit Court U. S. 1st Circuit, Mass.; in the matter of John I. Pitman, 1 Curtis, 189, contempt proceedings.)

The master did not treat the answer of the clerk as evidence. This was erroneous, as will plainly appear when we consider what this proceeding is. \* \* \*

Now, one of the most important privileges accorded by the law to one proceeded against as for contempt, is the right to purge himself, if he can, by his own oath. So rigid is the common law as to this that it does not allow the sworn answers of the respondent to be controverted as to matter of fact by any other evidence. (U. S. v. Dodge, 2 Gall., 313.)

The rule was the same at common law:

If any party can clear himself upon his oath he is discharged. (4 Bl. Com., 286, 287; *Burke v. The State*, 214 Ind., 528.)

When the answer to a rule to show cause why one should not be attached for contempt negatives under oath any intentional disrespect to the court of purpose to obstruct its process the rule should be discharged. (In re Wilson Walker, 82 N. C., 95.)

Knowing the law, Judge Swayne issued a rule to show cause why Davis and Belden should not be committed for contempt upon an unsworn statement of Mr. W. A. Blount. He put upon the record another statement of his own, presumptively as evidence or as a justification of his act—an unsworn statement of alleged facts, some of which were true and some untrue.

He ignored the sworn denial of the accused that they had committed or had intended to commit a contempt, and without any evidence whatever to establish the fact, except that they had brought a suit against him in the State court and served him with process Saturday night. He condemned them to be disbarred two years, to be fined, and cast into prison. The charge against them, and of which they were convicted, was a contempt of the "dignity and good order" of the district court of the United States. The offense consisted, as stated by Judge Swayne, not in the act, but in the intent with which it was done, viz, to force him to recuse himself in the case of Florida McGuire:

Suppose, for the sake of argument, that such was their intention, viz, to force the judge to recuse himself. The intent was never carried out. No one was harmed. The judge was not forced to recuse himself. The suit against him in the State did not exercise any influence on him in that direction, for the very good reason that the suit in his court was disposed at the request of the plaintiff, with his consent, at the opening of the court on the first secular day after the suit was brought against him in the State court. The law does not punish guilty intentions. One may intend to slander, steal from, or even kill his neighbor. If the intent is never carried out no human law exists to punish.

All these plain and common principles Judge Swayne must be presumed to have known. Therefore he knowingly and unlawfully held these attorneys guilty of a contempt when none had been committed, when none could have been committed which were punishable under the act of Congress, and he did it in violation of the well-established law of procedure in such cases.

We are seeking for the motive which actuated Judge Swayne in the light of the circumstances. He must have known that he had

no right to impose a fine and also an imprisonment upon these officers of his court. The act of Congress is very plain. A wayfaring man, though a fool, need not err there. It provides fine or imprisonment, not fine and imprisonment. The Supreme Court, with whose decisions Judge Swayne will not plead that he was not familiar, has also settled that point. (See 131 U. S., 267.)

Again, still in search of the motive of Judge Swayne in imposing his unlawful punishment, attention is called to the fact that he sentenced these lawyers to disbarment for two years; in other words, to ruin. To forbid a lawyer the right to practice his profession for two years is, standing alone, a severe sentence. Such a sentence will scatter a lawyer's practice; seriously damage, if not irretrievably ruin, his reputation, and generally destroy his usefulness and earning power. Ought Judge Swayne be heard to say that he knew no better? Evidently if he might it would be true, because when his *amicus curia* stepped up to the bench and suggested that he had exceeded his authority he remitted that part of the sentence. He ought not to be heard to plead his ignorance, because the highest court decided (19 Wallace, 512) that punishment by disbarment could not be imposed under the act of 1831. The fact that he found it in his heart to impose such an unlawful sentence is helpful in ascertaining the true intent that actuated him in the whole transaction.

The last evidence that Judge Swayne was actuated by an evil intent to punish a personal affront by a clear violation of the law and an arbitrary abuse of judicial power is found in his vituperation and abuse of the respondents at the time he sentenced them. The facts, as stated by them, are not denied by the Judge or his *amicus curia*, who both testified in the case. His manner was "offensive and insulting." He denounced these lawyers as "ignorant." He vituperated them as a "stench in the nostrils of the people." From these circumstances the fact is found that Judge Swayne had something in his heart besides an honest intent to vindicate the dignity of his court, and that that something was an intent to punish these unfortunate persons who had fallen into his power, not for offending against the dignity and good order of the court, but for what he conceived to be a personal affront.

Doubtless an argument may and will be made that Judge Swayne believed that the lawyers, Paquet, Belden, and Davis, brought an unfounded action against him for the purpose of influencing his action in the Florida McGuire case, and also that their conduct in bringing the suit after dark Saturday night and procuring the service of process upon him that night was intended as a personal affront, and that he also believed they caused to be published in the papers next morning notice of the suit (which was not proved), and therefore he was properly and righteously indignant and should be leniently dealt with, because what he did was done under provocation and in the heat of his displeasure.

The answer is that if he had observed the common rules of administering justice and had decided the case as the law requires he would never have thought for a moment of punishing a constructive contempt after the accused had purged themselves under oath.

Certainly no hurt feelings, no offended dignity, even no legitimate desire to punish a punishable contempt, could justify or excuse the grossly unlawful and excessive punishment imposed in this case.



If the independence of the judiciary and their power to protect their own dignity and honor are indispensable to a free government, the right of the great body of earnest, learned, and faithful men who practice at the bar to be exempt from cruel, unusual, and unlawful punishments at the hands of judges for imaginary or real offenses is no less sacred.

For such a high misdemeanor in office no judge should be allowed to escape just punishment on the plea that he made a mistake of law. If allowed, there is no arbitrary abuse of discretion, no disobedience of law, no oppression or outrage upon the rights of liberty or property that could not go unwhipt of justice.

In support of the fourth charge, viz, the arbitrary and unlawful imprisonment of W. C. O'Neal, the facts in the case are as follows:

One Greenhut had been appointed trustee in bankruptcy of one Scarritt Moreno. Greenhut brought an action in the county court of Escambia County for the purpose of having certain land, the title to which was in the bankrupt's wife, brought into the bankrupt's estate, and also to relieve the said land of a certain mortgage of \$13,000, which appeared to be a lien upon it, which had been given the National Bank of Pensacola and by them assigned to the bank. Greenhut was a director and O'Neal was president. Greenhut was also indorser on Moreno's paper in the bank for \$1,500.

On the 20th day of October O'Neal was passing along the street in front of Greenhut's store. Greenhut was in conversation with another man. O'Neal spoke to him and said when he was at leisure he wished to speak with him. Greenhut said he could speak at once and invited him to enter his store. O'Neal reproved Greenhut for including the bank in the suit which he had brought. He stated to Greenhut that he, Greenhut, was aware of the fact that the \$13,000 mortgage was genuine; that the bank had advanced the money and had parted with it for a valuable consideration; also that he, Greenhut, had often promised to pay the indorsed paper upon which he was liable to the bank, but had not done so. But words passed, when O'Neal passed out of the store, followed by Greenhut to the sidewalk, where an affray occurred in which Greenhut was stabbed by O'Neal with a pocketknife and seriously injured. O'Neal swore that Greenhut assaulted him and that, being a much weaker man physically, he defended himself with a small pocketknife.

A proceeding for contempt of the district court of the United States was commenced, in which B. C. Tunison appeared for the receiver, Greenhut.

At the time of the affray the district court was not in session. The difficulty took place at a considerable distance from the courthouse on a public street. Judge Swayne was not at the time in the district.

The charge for contempt proceeded upon the theory that, the assault having been made upon a receiver in bankruptcy appointed by the district court for some matter growing out of his actions as receiver, a contempt of the district court had been committed. O'Neal had been arrested in the State court for his offense against the law. When the rule to show cause why he should not be committed for contempt was served, he employed counsel and made answer, denying any intent to commit a contempt of court.

The testimony of Greenhut and O'Neal was taken; none of the bystanders were sworn, nor was any other person sworn. O'Neal

denied the contempt and explained that the quarrel grew out of the relations of Greenhut to the bank and what he claimed to be his dishonesty in including the bank in the suit. Greenhut contended that he was an officer of the court, and that he had been assaulted on account of his official acts, and, as a consequence, had been laid up for a period of time and rendered unable to perform his duty as receiver.

Judge Swayne sentenced O'Neal to be imprisoned in the county jail for a period of 60 days.

The act of Congress defining the power of the United States courts to punish contempt is as follows:

The said courts shall have the power to impose and administer all necessary oaths and to punish by fine or imprisonment, at the discretion of the court, contempt of their authority: *Provided*, That such power to punish contempt shall not be construed to extend to any cases except the misbehavior of any person in their presence or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said court in their official transactions, and the disobedience or resistance by any such officer or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said court.

Manifestly the case of O'Neal was not within the act. The offense was not committed—

- (a) In the presence of the court.
- (b) Or so near thereto as to obstruct the administration of justice.
- (c) It was not a misbehavior of an officer of the court in an official transaction.
- (d) Was not resistance of any lawful act, order, rule, decree, or command of said court by any person.

This act was passed after an unsuccessful attempt to impeach Judge Peck for striking the name of an attorney from the roll for an alleged contempt of court committed by him in publishing a criticism of a published opinion of the judge in a case in which the attorney had appeared and which had been appealed.

The impeachment proceedings provoked long discussion as to the common-law power of the United States courts to punish contempt not committed in the presence of the court. To set doubts at rest and to define the powers of such courts this salutary act was passed. It bounds and limits the rights and powers of these courts, and its transgression ought not to be regarded lightly in cases involving the liberty of citizens of the Republic.

The action of Judge Swayne was, to say the least, arbitrary, unjust, and unlawful. It could have proceeded only from either willful disregard of the law or from ignorance of its provisions, an excuse which he will not be likely to set up.

If an unlawful act is committed by judge or layman the law conclusively presumes an evil intent.

The theory upon which O'Neal was held guilty of contempt of court was:

- (a) That Greenhut was an officer of the court.
- (b) That he was assaulted for performing an official act in the line of duty.
- (c) That he was disabled by the assault from performing his duties as receiver for about two weeks.

Suppose all the allegations to have been proved, before the assailant of Greenhut could be held guilty of contempt of court some proof

should have been produced to show that O'Neal's purpose in committing the assault was to punish Greenhut for his official action and to disable him from performing his duty as receiver.

If his purpose was to rebuke Greenhut for his bad faith as a bank director, or if the quarrel between the men which resulted in the fight had its origin in a dispute about Greenhut's knowledge that the mortgage was genuine or that Greenhut was endeavoring to escape liability upon his indorsement to the bank of Moreno's paper, and if he had no thought of the court or intention to interfere with its operations, then certainly he was not guilty of a contempt. O'Neal did not assault Greenhut because Greenhut had sued the bank, but because he had sued the bank knowing that his contention was false. That was the occasion of O'Neal's remonstrance which led to the fight.

Whatever his purpose, the assault was not committed in resistance of any order, decree, rule, or command of the court. No one pretends that it was. The only claim is that the court has power and should protect a receiver in bankruptcy by punishing anyone who quarrels with him on account of anything he does in the line of his duty as receiver. If it has such power, it is not conferred by the statute. And as the district court has no other authority to punish for contempt except that which is conferred by the statute, the conclusion is that in this case a citizen of the United States was unlawfully condemned to prison.

The answer of O'Neal purged the contempt, and it was error to punish him for it.

In support of the fifth and sixth charges, viz, the appointment by Judge Charles Swayne of B. C. Tunison to the office of United States commissioner, knowing him to be a man of bad reputation for truth and veracity, and that the said Tunison was reputed to exercise undue influence over Judge Swayne, the evidence established the fact that Judge Swayne reappointed B. C. Tunison commissioner of the United States after a trial in his court in which Tunison, as prosecutor, had been successfully impeached as a witness.

The evidence also establishes that the members of the bar at Pensacola, Fla., and elsewhere in the district, and suitors in the United States court are of opinion that Tunison has the power to exercise undue influence over Judge Swayne and that he does exercise such influence. To such an extent does this belief prevail that lawyers advise their clients to employ Tunison in their business as the best and only way to succeed in Judge Swayne's court.

No special acts of favoritism were shown. Neither was it proved that Tunison won an undue proportion of cases in the United States court. Nevertheless, the opinion stated is widely entertained. Tunison was shown to be very friendly with Judge Swayne—so friendly that he declined to pursue a habeas corpus case in which he had received a fee of \$100, averring that he did it because Judge Swayne was his friend. The case referred to is that of Davis and Belden, committed by Judge Swayne for contempt of court. It may be remarked that Tunison neglected to return the retainer. The testimony satisfies the committee that Tunison is a dishonest man; also that he is indorser on a note of Judge Swayne that has been renewed for seven successive years in the Pensacola Bank.

The charges and specifications not covered by the foregoing findings were not proved by sufficient evidence to warrant action upon them.

Upon the whole case it is plain that Judge Swayne has forfeited the respect and confidence of the bar of his court and of the people of his district who do business there. He has so conducted himself as to earn the reputation of being susceptible to the malign influence of a man of notoriously bad character. He has shown himself to be harsh, tyrannical, and oppressive, unmindful of the common rule of a just and upright judge. He has continuously and persistently violated the plain words of a statute of the United States, and subjected himself to punishment for the commission of a high misdemeanor. He has fined and imprisoned members of his bar for a constructive contempt without the authority of law and without a decent show of reason, either through inexcusable ignorance, a malicious intent to injure, or a wanton disposition to exercise arbitrary power. He has condemned to a term of imprisonment in the county jail a reputable citizen of the State of Florida over whom he had no jurisdiction, who was guilty of no thought of a contempt of his court, for no offense against him or in the presence of the court, or "in obstruction of any order, rule, command, or decree," and after the accused had purged himself on oath.

For all those reasons Charles Swayne has been guilty of misbehavior in his office of judge and grossly violated the condition upon which he holds this honorable appointment. The honor of the judiciary, the orderly and decent administration of public justice, and the welfare of the people of the United States demand his impeachment and removal from the high place which his conduct has degraded.

It is vitally necessary to maintain the confidence of the people in the judiciary. A weak executive or an inefficient or even dishonest legislative branch may exist, for a time at least, without serious injury to the perpetuity of our free institutions, but if the people lose faith in the judicial branch, if they become convinced that justice can not be had at the hands of the judges, the next step will be to take the administration of the law into their own hands and do justice according to the rule of the mob, which is anarchy, with which freedom can not coexist.

In support of the seventh charge, viz, that Judge Swayne arbitrarily and unlawfully refused to hear witnesses produced by a litigant in his court upon the ground that he would not believe them if sworn, and that he continued his case arbitrarily and unlawfully without day, the testimony showed as follows:

The case of W. H. Hoskins is one of peculiar hardship. This man was advanced in years and was unable to read or write. He was engaged in the business of producing turpentine, growing cotton, and general merchandising. He had accumulated property worth about \$40,000, and owed debts amounting to about \$10,000. A part of this indebtedness was of the firm of Hoskins & Hilton, of which he had been a partner. He had sold out his interest in the firm under an agreement that the purchaser would pay the indebtedness of the firm. This agreement was not kept, and some suits were brought against Hoskins, in which he was defended by a lawyer named J. N. Calhoun on the ground that the suit should have been brought against the person who had agreed to pay the debts. Of course the defense failed and Hoskins paid.

This was the beginning of trouble. The evidence is full and convincing that a lawyer named Boone conspired with Calhoun to put Hoskins in bankruptcy in order to plunder his estate. Some claims came into their hands for collection. Hoskins paid promptly on demand, and notified Boone, through his counsel, Judge Liddon, that he was prepared to pay everything he owed. Boone secured claims to the amount of \$500, and without authority of his clients commenced proceedings involving bankruptcy against Hoskins, swearing to the petition himself. Certified checks were sent to all the creditors; some took them and withdrew; others were deterred by Boone's action. He told them that they would subject themselves to large costs and fees if they took their money.

Judge Swayne, against objection, gave time to Boone to obtain a proper verification of the complaint; then to get more creditors to sign the petition in place of those withdrawn. This he did at least twice. Hoskins filed a denial of insolvency and demanded a trial. Meantime, one Tunison, United States commissioner and next friend of Swayne, was taken into the conspiracy. Hoskins was adjudged bankrupt, a receiver was appointed, all his property seized, his store closed, his men intimidated, and ruin stared him in the face, as his business of producing turpentine needed daily care. He went to Boone with the money to pay all his debts. Boone told him he would be in contempt of court if he attempted to pay money to the creditors, and demanded \$1,000 for himself and \$1,000 for Tunison, and all costs. Hoskins refused.

Calhoun, as receiver, sent a man named Richardson to seize Hoskins's books of account at one of his branch stores. He found a book belonging to the firm of Hoskins & Bro., which had been left there for a bookkeeper to make up. On his return he met C. H. Hoskins, a son of W. H. Hoskins, one of the firm of Hoskins & Bro., who demanded the book, stating that it did not belong to his father and contained nothing pertaining to his business. Richardson refused to give it up; a fight ensued, and young Hoskins took the book by force. The next step of the conspirators was to commence proceedings for contempt of court against young Hoskins. The motive is fully explained by a letter from Boone to Tunison:

[Robt. J. Boone, attorney and counselor.]

MARIANNA, FLA., *March 13, 1902.*

GENTLEMEN: In re W. H. Hoskins, involuntary bankruptcy.

I beg to inclose you herewith another claim to be added to the amended petition, to the amount of \$200, which you will please have the court to include. I have just received telegram from Calhoun stating that the petition had not yet arrived. I have wired for same three times in the last two days and trust same will reach you to-night. This additional claim of \$200 is a stunner to them I presume.

I trust you all will be able to handle the matter all right. I feel sure that we have them coming our way now, and we if can have C. D. Hoskins attached for contempt it will break the old man down sure.

Please advise me in the premises as early as possible and oblige,

Very truly, yours,

ROBT. J. BOONE.

MESSRS. TUNISON & LOFTIN, *Pensacola, Fla.*  
(Inclosures.)

W. H. Hoskins, finding that he was not allowed to pay everything, averred his solvency, and demanded a trial on that question. Judge Swayne refused to proceed with the case until the book taken by young Hoskins was produced.



The following motion was made by Mr. Tunison on behalf of petitioning creditors:

On account of the forcible taking away of certain books belonging to the estate of the alleged bankrupt by the son of the bankrupt from the possession of the receiver herein, as fully set forth in the petition and affidavit of J. M. Calhoun, receiver, heretofore filed, which books are essential to the ascertainment of the true condition of the estate, and the continued withholding of the books from the custody of the receiver, petitioning creditors ask for a postponement for such a time as will enable them to secure the information believed to be contained in those books.

By Mr. Eagan, representing intervening creditors; also by Judge B. S. Liddon and W. H. Price, representing W. H. Hoskins, respondent.

Now, your honor, we desire to oppose the action for a postponement and continuance on the grounds stated, for the reason that the said C. H. Hoskins, alleged to have the books in question, is not a party to the record of these proceedings; for the further reason that those books are not under the control of the intervening creditors or respondent, W. H. Hoskins; on the further ground that it is not true that the books contain any matter, items, or accounts, or any business transactions of any kind or in connection with the business of W. H. Hoskins, who is the respondent, or of any firm with which he was ever connected, or of which he was a member, and we are ready now to submit to your honor proof of these facts by W. H. Hoskins, W. H. Price, who has recently examined these books, and also by T. A. Jennings, vice president of the J. P. Williams Co., Savannah, Ga., that he has recently examined these books—that is, since the beginning of these proceedings—and that the same did not contain any accounts or business transactions of any kind of the business of W. H. Hoskins or in connection with these proceedings.

We also proffer to prove the same things by W. H. Hoskins, who also knows the books and what they contain.

We offer to prove that the books in question are the books of a firm called Hoskins Bros., composed of J. P. and C. D. Hoskins, and have reference solely to the matters of said firm, and that W. H. Hoskins was never in any manner a partner or in any way connected with said firm; and further, that the books are not absent by the consent or advice of counsel or any of the intervening creditors herein, or of the said W. H. Hoskins, and that none of them know the whereabouts of the said books, or have seen them since the absconding of the said C. D. Hoskins.

BY THE COURT: The court, in answer to the motion, states that it believes from the showing and circumstances, the only showing before the court was an affidavit by Calhoun, who had never seen the book, that he believed it contained something important; that the bankrupt in this case is in a measure responsible for the absence of the books in question, and under these circumstances can not permit the bankrupt nor his friends to testify to their contents in their absence until some better showing is made or tendered as to their whereabouts.

W. H. Hoskins was present in court with his counsel and offered testimony of several disinterested persons who knew the facts that the books to which Judge Swayne alluded had been taken by one C. D. Hoskins, to whom, as one of the firm of Hoskins & Bros., they belonged; that W. H. Hoskins, the alleged bankrupt, had no interest in said firm; that the said books were not in the possession of W. H. Hoskins or under his control; that they contained no written items or accounts of any business transacted of any kind connected with the business of W. H. Hoskins, or of any firm of which he was ever a member, and that he had nothing whatever to do with the taking or any knowledge of their whereabouts.

Notwithstanding, the said Charles Swayne, in the absence of any evidence to the contrary save an affidavit of one Calhoun, who had never seen the books, but swore he believed they contained something of importance in the case, refused to proceed with the case, stating that he "would not believe the evidence offered if sworn to by his brother," and continued the hearing of the same without day, to the great injury of the said W. H. Hoskins.

Young Hoskins had been hiding out to escape arrest, of which he was so fearful that he said he would rather die than go to jail. His uncle, one Rhodus, went to Tunison, who had instituted the contempt proceeding, and paid him \$50 and agreed to give \$50 more if Tunison would intercede with Judge Swayne to let young Hoskins off with a fine without imprisonment. Tunison took the money, but Swayne insisted upon going on with this case against young Hoskins, who finally put an end to Swayne's persecution by taking his own life.

W. H. Hoskins, despairing of getting justice or a hearing, paid the creditors in full and such costs as Calhoun demanded.

The whole disgraceful perversion of law and justice was made possible by the complaisancy, stupidity, or worse, of Judge Swayne, who lent himself to a conspiracy to ruin an honest man by aiding the conspirators in every way in his power. He had no right to refuse a hearing to Hoskins on the ground that a book taken out of the custody of the receiver's clerk by any other person must first be produced. It was a denial of justice. It was an arbitrary and oppressive abuse of power. There was no sufficient testimony before the judge that the book had any relevancy to the case; nothing but the affidavit of the receiver, who had never seen the book, that he believed it contained something necessary to the determining of the question of Hoskins's solvency. In the face of an offer to prove the fact by disinterested and competent testimony, among others that of a person who had examined it, the judge refused to believe anything, saying that he would not believe his own brother if he would swear to it. In his argument before the subcommittee, Judge Swayne was asked why he refused to hear Hoskins's witnesses to prove that the book was that of Hoskins Bros., and contained nothing whatever pertaining to the business of W. H. Hoskins. His answer was, Because he would not believe the witnesses.

Being interrogated by the subcommittee as to why he refused to hear Hoskins's witnesses, Judge Swayne testified as follows:

Mr. PALMER. Did you state it was unnecessary for Hoskins to submit any proof about these books? Does not the record show that?

Judge SWAYNE. There was a witness upon the stand who testified as to Mr. Hoskins's ability to pay his debts.

Mr. PALMER. But what had that to do with the proof submitted by the witness Jennings?

Judge SWAYNE. Well, that requires a further answer. And there was, I believe, some evidence by a man they called Price, on this subject, but that man's name was not Price, although he went by that name. He was designated as Price, but his name was really something else, which I do not now recall.

Mr. PALMER. Then you mean to say, in substance, that you did not have any confidence in that witness?

Judge SWAYNE. I certainly did not.

Mr. PALMER. Well, do you think a judge has the right to take that view of a witness in the administration of justice?

Judge SWAYNE. Yes, sir.

Mr. PALMER. At the time you made that ruling was there any proof that Hoskins had ordered his son to take the books back?

Judge SWAYNE. Well, I wanted to have the books in court when the trial came on or show that they could not be had.

Mr. PALMER. That is just the point. And you refused to hear anything on the point and would not hear the witness or hear the testimony?

Judge SWAYNE. I did not see how I could.

Mr. PALMER. That is correct, is it?

Judge SWAYNE. Yes, sir.

This action of the judge presents at least an entirely new feature in the administration of justice. A suitor is denied the right to offer

evidence in support of his case because the judge has made up his mind in advance that the witnesses offered are not worthy of belief.

In this case Mr. Price, one of the witnesses, was a practicing attorney of the courts of Florida and, presumptively, a perfectly worthy man. Mr. Jennings was one of the largest producers of turpentine in the State, a substantial business man, personally known to at least one member of the committee to be of irreproachable character and standing. W. H. Hoskins was at least competent to testify that the book was not his and was not used in his business.

To refuse to hear these witnesses was an unwarranted and unheard-of proceeding. To continue the case of Hoskins without day, under the circumstances, was an unparalleled abuse of discretion on the part of the judge, which amounted to a denial of justice.

In support of the eighth charge the testimony taken establishes the following facts, which are not disputed by the respondent:

1. That at a time when the Jacksonville, Tampa & Key West Railroad was in the hands of Mr. Durkee, a receiver appointed by Hon Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, the receiver provisioned a private car which belonged to the railroad company, placed a conductor and cook upon it, and sent it to Guyencourt, Del., for the purpose of bringing Judge Swayne to Jacksonville, Fla. Judge Swayne, his wife, his wife's sister, and her husband were transported on the private car to Jacksonville, Fla., and subsisted at the expense of said railroad company.

Judge Swayne acknowledged the facts, as above stated, but defended his action upon the ground that the property of the railroad company being in the hands of the court; he, the judge of the court, had a right to use it without making compensation to the railroad company.

When questioned on the subject, he answered as follows:

By Mr. PALMER:

Q. You said this car was one of the cars in possession of the court because the road was in the hands of a receiver?—A. Yes.

Q. You said that it was the privilege of the court to use that car because the road was in the hands of a receiver?—A. Yes; that was the reason why it was used.

Q. You thought that, the railroad being in the hands of the court, you had the right to use the property of the railroad without rendering the railroad any compensation for it?—A. The receiver, in talking that over with me, stated that it was generally understood that a car was in better condition running than if it were standing idle on a siding.

Mr. PALMER Will the stenographer read that question, please?

The STENOGRAPHER (reading):

“Q. You thought that, the railroad being in the hands of the court, you had the right to use the property of the railroad without rendering the railroad any compensation for it?”

Mr. PALMER. That is the question.

The WITNESS. Yes, sir. I had 10 railroads in my hands as judge in six years.

The testimony further establishes the fact that Judge Charles Swayne made use of the same car for the purpose of taking a trip to the Pacific coast with his family and friends. The proof was that the car had some liquid supplies on board when taken. Judge Swayne expressed the opinion that he left as much when it was returned.

In the case of the trip from Delaware and also the trip to California transportation was secured by the receiver over other railroads, and on return therefor the private cars from the other roads were transported over the Jacksonville, Tampa & Key West without charge.

A porter or cook employed by the railroad company went with the car to the Pacific coast, at the cost of the company.

In support of the ninth, tenth, and eleventh charges the testimony further establishes the fact that for every day that Judge Swayne has held court out of his district since he has been a judge he has received from the Treasury of the United States the sum of \$10, which has been paid upon his certificate that he had expended that sum for reasonable expenses. Judge Swayne's account, as proved by an official of the Treasury Department, is as follows:

Name of marshal paying voucher.	Account No.	Place of holding court.	Period covered by voucher.	Amount paid.
Guillotte.....	9349	Baton Rouge, La.....	Apr. 19 to May 4, 1895.....	\$140
Do.....	9349	New Orleans, La.....	May 13 to May 31, 1895.....	170
Love.....	18650	Waco, Tex.....	30 days from Nov. 18, 1895....	300
Do.....	18650	Dallas, Tex.....	40 days from Jan. 21, 1896....	400
Do.....	18650	Graham, Tex.....	2 days from Mar. 9, 1896.....	20
Do.....	26252	Waco, Tex.....	18 days from Apr. 27, 1896....	180
Do.....	26252	Dallas, Tex.....	36 days from May 18, 1896....	360
Do.....	29482	Waco, Tex.....	28 days from Nov. 18, 1896....	280
Do.....	35513	Dallas, Tex.....	42 days from Jan. 11, 1897....	420
Do.....	35513	Fort Worth, Tex.....	12 days from Mar. 1, 1897.....	120
Do.....	36910	Waco, Tex.....	23 days from Apr. 20, 1897....	230
Do.....	36910	Dallas, Tex.....	39 days from May 17, 1897....	390
Guillotte.....	61252	New Orleans, La.....	19 days from Jan. 1, 1898.....	190
Do.....	44704	do.....	40 days from Jan. 20, 1898....	400
Do.....	44704	do.....	11 days from Mar. 1, 1898.....	110
Do.....	44704	do.....	10 days from Mar. 11, 1898....	100
Do.....	44704	do.....	10 days from Mar. 22, 1898....	100
Do.....	61252	do.....	10 days from Apr. 1, 1898.....	100
Do.....	61252	do.....	15 days from Apr. 16, 1898....	150
Do.....	61252	do.....	10 days from May 1, 1898.....	100
Do.....	61252	do.....	19 days from May 11, 1898....	190
Fontelleu.....	54281	do.....	19 days from Nov. 21, 1898....	190
Do.....	54397	do.....	10 days from Jan. 30, 1899....	100
Do.....	54397	do.....	10 days from Feb. 8, 1899.....	100
Do.....	54397	do.....	10 days from Feb. 18, 1899....	100
Do.....	54397	do.....	10 days from Feb. 28, 1899....	100
Do.....	54397	do.....	10 days from Mar. 10, 1899....	100
Cooper.....	56988	Birmingham, Ala.....	28 days from Apr. 4, 1899.....	280
Do.....	56988	do.....	19 days from May 22, 1899....	190
Do.....	60217	Huntsville, Ala.....	29 days from Oct. 9, 1899.....	290
Fontelleu.....	70206	New Orleans, La.....	10 days from May 24, 1900....	100
Do.....	70206	do.....	10 days from June 2, 1900.....	100
Do.....	70206	do.....	5 days from June 12, 1900....	50
Cooper.....	69592	Birmingham, Ala.....	29 days from Sept. 3, 1900....	290
Do.....	73109	do.....	8 days from Sept. 3, 1900....	80
Grant.....	71960	Tyler, Tex.....	31 days from Dec. 3, 1900....	310
Cooper.....	78334	Birmingham, Ala.....	21 days from Sept. 2, 1901....	210
Houston.....	93964	Tyler, Tex.....	41 days from Jan. 12, 1903....	410

Witnesses with whom Judge Swayne boarded at Fort Worth, Dallas, Tyler, and Waco, in hotels and boarding houses, during the times when he held court in those places testified in part as follows:

Samuel McIlhenny, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Give your name in full.—A. S. C. McIlhenny.

Mr. HIGGINS. What is your first name?

The WITNESS. Samuel.

By Judge LIDDON:

Q. Your residence?—A. Dallas, Tex.

Q. Your business or occupation?—A. I am manager of the Oriental Hotel.

Q. How long have you been such manager?—A. Eight years.

Q. Were you such manager in January, 1896?—A. No; I was in the office in 1896. I was connected with the house.

Q. In January, 1896?—A. Yes, sir.

Q. Did you know Judge Charles Swayne?—A. Yes, sir.

Q. How long have you known him?—A. Well, I did not know the judge until I went to the hotel. I was in a former hotel there. He was there when I first went to the hotel.

Q. He was at the Oriental when you first went there?—A. Yes, sir.

Q. You say that was when?—A. In 1896.

Q. Do you know the date in 1896?—A. The first part of the year; I don't know exactly the date—either January or February. In January, I think it was, some time.

Q. In January?—A. Yes, sir.

Q. Do you know whether Judge Charles Swayne was at Hotel Oriental in January, 1896?—A. He was there when I went there. I went there in the latter part or middle part of January.

Q. Do you know when he left?—A. No; I do not.

Q. Can you refresh your memory from that memorandum—did you make that [submitting paper]?—A. The cashier or bookkeeper made that—

Judge LIDDON. I submit this as an exhibit.

## EXHIBIT F.

DALLAS, TEX., *March 5, 1896.**Mr. Chas. Swayne to the Oriental, Dr.*

[S. E. McIlhenny, manager.]

Mar. 1 to 3/6, 6 days.....	\$16. 00
For board month of Feb. 9 to 2/29, 20½ days.....	68. 35
Feb. 1 to 2/9, 8½ days.....	19. 80
Express, 2/3, .60.....	. 60
Laundry, 2/12, 1.30, 1.10; 3/5, .75.....	3. 15
Wine, etc., 2/26, .40.....	. 40
Telegrams, 2/24, 1.15.....	1. 15
Drugs, 2/6, 1.35.....	1. 35
	<hr/>
	110. 80
3/6, cr. by rebate on rate.....	\$13. 80
3/6, cr. by cash.....	97. 00
	<hr/>
	110. 80

The WITNESS.(continuing). But I looked over it.

Q. Is that his handwriting?—A. Yes, sir.

Q. He is in charge of the books there?—A. Yes, sir.

By Mr. PALMER:

Q. Did you examine it to ascertain if it was correct or not?—A. Yes; I looked over it when he made it off the board book.

By Judge LIDDON:

Q. Do you know how much he paid for his board there in January, 1896?—A. I do not, only from this memorandum.

Q. Can you tell from that memorandum?—A. Yes, sir.

## EXHIBIT G.

DALLAS, TEX., *January 31, 1896.**Mr. Chas. Swayne to the Oriental, Dr.*

[S. E. McIlhenny, manager.]

For board month of Jan. 20 to Jan. 31, 1896.....	\$26. 80
Laundry, 20/95.....	. 95
Wine, etc., 20/50.....	. 50
	<hr/>
	28. 25
Cr. Feb. 5, 1896, by chk.....	28. 25

Q. How much was it?—A. According to that, in January he paid \$28.25. The books correspond with this statement exactly; that is, in January.

Q. He paid \$28.25?—A. Yes.

Q. Now, were you connected with the same hotel—you said you were—in March, 1896?—A. Yes, sir.



Q. Do you know whether Judge Swayne stopped at that hotel, then, in February or March, 1896?—A. Yes, sir.

Q. Do you know how much he paid?—A. He paid cash \$97.

Mrs. Annie E. Russell, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Where do you live?—A. Tyler, Tex.

Q. How long have you been there?—A. About 22 years.

Q. You are engaged in running a hotel, or have been, or a boarding house there?—A. No, sir.

Q. Have not at all?—A. No, sir; we just had a very large house, and during this court Mr. Butler came and asked me if I would take some of the judges and lawyers, and I told him I would. We had a large house and were renting the rooms. I had only been there about two years.

Q. That was at Tyler?—A. Yes, sir.

Q. Did Judge Swayne ever board with you there?—A. Yes, sir.

Q. Do you know the date?—A. No, sir; I did not make any memorandum of it, but it was during that trial of the bank there.

Q. In the United States court room?—A. Yes, sir.

Q. Do you know in what year it was?—A. It was last year.

Q. 1903?—A. Yes, sir.

Q. Do you know what part of the year—the early part or the latter part?—A. It was January, as well as I can recollect.

Q. Do you know how long he stayed with you?—A. From the beginning until the end. I did not keep any memorandum of it at all. He was there from the time the court opened until it closed.

Q. You do not know how long; could not approximate the time?—A. I think it was about six weeks or more; I am not sure about that.

Q. Do you know what rate of board he paid you?—A. Yes, sir; \$1.25 a day.

Q. Did that include lodging?—A. Yes, sir.

Mr. CLAYTON. That included table board and lodging?

A. Yes, sir; everything.

By Judge LIDDON:

Q. \$1.25 a day?—A. Yes, sir.

Q. In the early part of the year 1903 he was there from four to six weeks?—A. He was there during the whole term of court.

Susan Lyle Downs, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Where do you reside?—A. Waco, Tex.

Q. You are engaged in the business of keeping a boarding house or hotel there?—A. A private boarding house.

Q. How long have you been so engaged, madam?—A. Seventeen years.

Q. Do you know Judge Charles Swayne?—A. Yes, sir.

Q. Has he ever been a guest of your house?—A. I think three terms of court. Of course, I am not sure, but that is my recollection.

Q. Three terms?—A. Three terms of court.

Q. Can you fix the date?—A. No, sir; I can not.

Q. Can you say whether it was since 1895?

Mr. HIGGINS. Speak of your own knowledge and without suggestion.

A. I really could not answer as to the year he was there. I could not; I do not.

By Judge LIDDON:

Q. You can not say how many years, or approximate how many years ago?—A. If you can tell when Judge Rector was disabled, I could tell you, but otherwise I can not.

Q. It was while he was holding United States court?—A. Yes, sir.

Q. And he stopped with you three terms?—A. Yes, sir.

Q. Did you ever know him to hold United States court there at any other time except the three times he stopped with you?—A. No; I don't remember it.

Q. Do you know how long he stopped with you at the time he was there?—A. No, sir; I do not. I know he was at the term of court, but I never made any memorandum of it.

Q. During a term of court three times?—A. I think so.

By Mr. CLAYTON:

Q. Do you mean the term while the court was lasting; the whole session of the court?—A. Yes.

Q. Not just for a day and then a day?—A. Oh, no.

By Judge LIDDON:

Q. You can not approximate how long he would stay at a time?

Mr. PALMER. About?

A. I really do not know.

By Mr. CLAYTON:

Q. Was he a transient, or did he stay a day or half a day?—A. He stayed during the whole term. I suppose probably from three to five weeks possibly.

Judge LIDDON. At a time?

A. Yes.

Mr. CLAYTON. That is, to the best of your recollection, from three to five weeks?

By Judge LIDDON:

Q. Do you know what rates you charged him for board?—A. At the rate of \$40 for himself, and \$65 for himself and wife.

By Mr. CLAYTON:

Q. What is that, per month?—A. Per month. I do not want to do any injustice here. That is to the best of my knowledge.

By Judge LIDDON:

Q. And \$65 per month when he had his wife with him?—A. Yes, sir.

Q. Are those your best rates?—A. Yes, sir.

Q. All you ever charged?—A. Yes, sir.

Q. You said he was there sometimes without his wife?—A. I think two terms without Mrs. Swayne: one term with her.

Q. When he was there without her it was \$40 a month, or \$65 for the two?—A. Yes, sir.

Q. That included room as well as board?—A. Room and board.

Q. Was it winter or summer that he was there?—A. I am not sure whether it was two fall terms or two spring terms of court. There was one term and then two of the other.

The act of Congress of 1871, Revised Statutes, section 596, provides, when a district judge is assigned to hold court outside his district, as follows:

And it shall be the duty of the district judge so designated and appointed to hold the district or circuit court aforesaid without any other compensation than his regular salary as established by law

The act of 1881, page 454, provides as follows:

And so much of section five hundred and ninety-six, Revised Statutes, as forbids the payment of expenses of district judges while holding court outside of their districts is hereby repealed.

And the act of 1896, page 451, as follows:

For reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts not to exceed ten dollars per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in settlement of his account with the United States.

It was admitted that Judge Swayne made and signed the certificates required by law before receiving each payment of \$10 per day, viz, that his reasonable expenses for travel and attendance amounted to a sum which was equal to \$10 for each day that he held court out of his district, whereas the testimony showed that his outlay for board and lodging at Waco, Tyler, and Dallas, Tex., ranged from \$1.25 to \$3 per diem, and that his traveling expenses from Pensacola could not have exceeded \$50.

The preliminary question to be submitted to the House is, Ought Judge Swayne to be impeached upon any or all the charges? Some gentlemen may be of opinion that some of the charges are insufficient, or that they are insufficiently proved, and that others are sufficient. If impeachment is ordered, the next step will be the selection of managers by the House, and the preparation by them of formal charges upon which the House will have an opportunity to pass.

In my opinion all the charges made are properly the subject of impeachment, and all are sustained by sufficient testimony.

It is true that some of these charges would not sustain an indictment, but it is also true that all the precedents establish the law that a judge may be impeached for misbehavior in office which is not indictable. I will repeat what has already been said on this subject.

Judge Pickering, of New Hampshire, a district judge of the United States, was impeached by the House, tried and found guilty by the Senate, and removed from office upon charges which did not import criminality and for which no indictment would have laid against him.

The charges were that he released the bark *Eliza* to her owners after she had been seized for a violation of the revenue laws, without requiring a bond, and that he refused an appeal to the United States. Second, that he appeared upon the bench in an intoxicated condition, and used profane language.

The claim was made, and strongly urged, that as to the first charge it was at most a mistake of law, not indictable, for which no judge can ever be questioned; and as to the second, that, however reprehensible, it also was not a criminal act. The House and Senate swept away this plea and proceeded to try and condemn.

In the case of Judge Chase the main charge was that he refused counsel the privilege of arguing to the court upon a question of law which had been fully argued and decided at a previous trial of the same cause, viz, whether forcible resistance to officers of the United States engaged in collecting revenue under an act of Congress amounted to levying war against the United States, and was, therefore punishable as treason.

The defense was made that at the most Judge Chase was guilty of nothing more than an innocent mistake of law, not indictable or particularly reprehensible. It was not claimed that he acted maliciously or vindictively or from any bad motive. In point of fact, the ruling was withdrawn and counsel instructed to proceed with any argument upon the point they had to offer before the case was tried; but they refused, withdrew from the case, and advised their client to decline to have counsel assigned by the court. He was tried, convicted of high treason, and sentenced to death, and pardoned by the President.

The House impeached Judge Chase, and a majority of the Senate voted that he was guilty. Certainly Judge Chase could not have been indicted for his act.

Judge Peck was impeached and tried by the Senate for imprisoning for 24 hours and suspending from practice one Luke E. Lawless, an attorney at law, for writing a criticism of a published opinion of the court on a case which had been appealed to the Supreme Court.

The defense was taken that the act of Judge Peck was not of a criminal nature, was not indictable, and therefore not the subject of impeachment. The House did not take that view. Twenty-one Senators voted guilty; 22 not guilty.

Many more precedents of a similar nature might be cited, but these are sufficient to settle the question that a judge may be impeached for misbehavior which is not indictable. Upon this point the remarks of Hon. James Buchanan in the case of Judge Peck may be profitable

What is an impeachable offense? This is a preliminary question which demands attention. It must be decided before the court can rightly understand what it is they

have to try. The Constitution of the United States declares the tenure of the judicial office to be "during good behavior." Official misbehavior, therefore, in a judge is a forfeiture of his office. But when we say this we have advanced only a small distance. Another question meets us. What is misbehavior in office? In answer to this question, and without pretending to furnish a definition, I freely admit we are bound to prove that the respondent has violated the Constitution or some known law of the land. This, I think, was the principle fairly to be deduced from all the arguments on the trial of Judge Chase, and from the votes of the Senate in the articles of impeachment against him, in opposition to the principle from which his counsel in the first instance strenuously contended, that in order to render an offense impeachable it must be indictable. But this violation of law may consist in the abuse as well as the usurpation of authority.

The abuse of a power which has been given may be as criminal as the usurpation of a power which has not been granted. Can there be any doubt of this? Suppose a man to be indicted for an assault and battery. He is tried and found guilty, and the judge, without any circumstances of peculiar aggravation having been shown, fines him a thousand dollars and commits him to prison for a year. Now, although the judge may possess the power to fine and imprison for this offense at his discretion, would not this punishment be such an abuse of judicial discretion and afford such evidence of the tyrannical and arbitrary exercise of power as would justify the House of Representatives in voting an impeachment?

But why need I fancy cases? Can fancy imagine a stronger case than is now, in point of fact, before us? A member of the bar is brought before a court of the United States guilty, if you please, of having published a libel on the judge—a libel, however, perfectly decorous in its terms, and imputing no criminal intention, and so difficult of construction, that though the counsel of the respondent have labored for hours to prove it to be a libel, still that question remains doubtful. If, in this case, the judge has degraded the author by imprisonment, and deprived him of the means of earning bread for himself and his family, by suspending him from the practice of his profession for 18 months, would not this be a cruel and oppressive abuse of authority, even admitting the power to punish in such a case to be possessed by the judge?

A gross abuse of granted power and an usurpation of power not granted are offenses equally worthy of and liable to impeachment. If, therefore, the gentleman could establish on the firmest foundation that the power to punish libels as contempts may be legally exercised by all the courts of the United States, still he would not have proceeded far toward the acquittal of his client. (Trial of Judge Peck, pp. 427-428.)

I believe Judge Charles Swayne is impeachable, and that he ought to be impeached, for persistent and long-continued violation of a wholesome statute, which commanded him to live in his district—not constructively, but actually; for arbitrarily, cruelly, and unlawfully casting into prison and fining two reputable lawyers for a constructive contempt, of which he had no jurisdiction under the statute law and the decisions of the Supreme Court of the United States; for refusing to hear reputable witnesses offered in his court to prove a relevant fact, on the ground that he would not believe them if sworn; for unlawfully, arbitrarily, and vindictively imposing the disgraceful punishment of 60 days in the county jail upon a citizen for an alleged constructive contempt of court, of which he purged himself on oath, and of which the court had no jurisdiction; for accepting from a bankrupt corporation valuable favors, which lessened the assets to which creditors were entitled and which it was his duty to secure for them, and for defending his action upon the ground that he had a right to do it; for representing to disbursing officers of the Government that his reasonable expenses for travel and attendance was \$10 per diem while holding court out of his district, and for receiving that amount, when in truth the expenses incurred and paid by him were less than \$10 and probably not more than \$4 or \$5 per diem.

This judge has behaved himself well or ill. If well, he should be vindicated by the vote of this House and dismissed with the commendation, "Well done, good and faithful servant." If ill, he should be

sent before the constitutional triers, where his apologies and excuses may or may not be heard. If the House is of opinion that the conduct of Charles Swayne has been commendable, let him go scot-free with your approval. In my humble judgment, it will be a sorry day for this Republic when such behavior as his is commended by the representatives of the people.

In this country, more than any other, the courts are the cities of refuge for the weak, the defenseless, and the oppressed. Upon their integrity, ability, and purity depends the preservation of liberty, property, and life. They are the first objects of attack by those who would tear down all government. The anarchist finds the courts in his way and would destroy them by legislation, by detraction, or any other efficient means. If the courts maintain their influence and power to do good, they must have the confidence and respect of the people. That lost, their days of usefulness will be numbered and "Mene, mene, tekel, upharsin" may be written upon their walls.

No better method can be devised to destroy public confidence in the judiciary than for this House to commend and sanction such conduct as that of which Charles Swayne has been guilty. Advise the people that the judges have the right to use the power given them to punish contempts against the dignity and good order of their courts for the purpose of revenge upon their enemies or of gratifying their hatred and malice; let them know you approve the conduct of a judge who takes away the assets of a bankrupt corporation committed to his charge, and applies them to his own use and that of his friends for their personal gratification; tell the people that petty larceny, which would consign a man to prison who stole to keep from starving is commendable in a judge, and how long do you think they will respect and honor the courts, and, after public confidence is gone, how long will the courts remain sanctuaries or guardians of liberty or property?

For more than 40 years I have stood before the courts of the State and nation, a practicing lawyer. I enjoy and greatly value the friendship of many judges, State and Federal. I have never had a personal difference with one. To me the office is so exalted and so sacred that its occupant commands and receives my respect without regard to his personality. I believe that the great majority of the judges of this country fill the requirements laid down to Moses in the wilderness of Sin more than 4,000 years ago. They are "able men, swift to hear, slow to speak, and slow to wrath;" they "fear God, love the truth, and hate covetousness." The fact that no trial has been had for the impeachment of a judge for more than 70 years is high testimony to the efficiency, integrity, and honor of the courts. That they may be kept pure and free from all reproach is my prayer and hope.

For this reason I shall vote to impeach Charles Swayne.

Mr. CLAYTON. Mr. Speaker, doubtless no Member of the present House has ever before been called upon to make special study of the provisions of the Constitution relating to impeachments. Assuming this to be true, I beg, therefore, for the convenience of the House, to state in brief form and in proper order the provisions that are applicable in the present case.

The Constitution provides:

1. That the House of Representatives, and the House of Representatives only, may impeach a civil officer of the United States.
2. That the Senate, and the Senate only, may try such civil officer.



3. That such impeachment may be presented for treason, bribery, or other high crimes and misdemeanors.

4. That the judgment shall be in case of conviction removal from office or removal from office and disqualification.

These several propositions are founded upon the following provisions of the Constitution:

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment. (Art. I, sec. 2.)

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law. (Art. I, sec. 3.)

In case of the removal of the President from office or of his death, resignation, or inability to discharge the powers and duties of the said office the same shall devolve on the Vice President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President shall be elected. (Art. II, sec. 1.)

The President shall be Commander in Chief of the Army and Navy of the United States and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices, and he shall have the power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Art. II, sec. 2.)

The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. (Art. II, sec. 4.)

The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State the trial shall be at such place or places as the Congress may, by law, have directed. (Art. II, sec. 2.)

Inasmuch as there is no contention in this case that Judge Swayne has been guilty of either treason or bribery, the only two specific impeachable offenses named in the Constitution, it may be well to inquire

#### WHAT IS AN IMPEACHABLE OFFENSE?

The Constitution denounces all impeachable offenses under the terms of "treason, bribery, and other high crimes and misdemeanors." "Other high crimes and misdemeanors" are general terms, and for the import and meaning reference may be had to English jurisprudence and parliamentary law, to the provisions of the constitutions of the several States relating to impeachments in existence prior to and at the time of the adoption of the Federal Constitution, and from the interpretation put upon the words in the debates in and by the action of the United States Senate in impeachment cases which have there been tried.

An impeachable crime or high misdemeanor is one which in its nature and consequences is subversive of the Government or is highly prejudicial to the public interest, and the impeachable offense may consist of a violation of some provision of the Constitution, or of some law, or of an official oath, or of some duty by act of commission or omission, or by the abuse of discretionary powers from improper motives, or for an improper purpose without the violation of a positive law, such as a constitutional provision or statute. Such offenses are included in the words "high crimes and misdemeanors."

An impeachment may involve an inquiry whether a crime against any positive law has been committed, but it is not exclusively a trial for a crime. The objects of impeachment lie wholly beyond the penalties of the statute. The purpose of this proceeding is to discover whether a cause exists for removing a public officer from office. (Curtis's Hist. of Const., 260, 261; 5 Elliott, 507-529; Gelden's Judicature in Parliament, London, 1681, p. 6; 1 Story on Const., pars. 797, 799, 800; Rawle on Const., 200. See 6 Wheaton, 204; 1 Kent's Com., 289.)

It was observed at an early day by an eminent British authority that "when the words 'high crimes and misdemeanors' are used in prosecutions by impeachment the words 'high crimes' have no definite signification, but are used merely to give greater solemnity to the charge." (Note to 4 Blackstone, 5.)

And again it was said by another English author:

Magistrates and officers \* \* \* may abuse their delegated powers to the extensive detriment of the community, and at the same time in a manner not properly cognizable before the ordinary tribunals.

And he proceeds to say the remedy is by impeachment. Wooddeson's Lectures, 596.

The Constitution defines the crime of treason, but we must refer to the common and parliamentary law for the definition of bribery and other high crimes and misdemeanors.

Story, on the Constitution, says:

In examining the parliamentary history of impeachments it will be found that many offenses not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy.

There are many offenses purely political which have been held to be within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute books. And, indeed, political offenses are of so various and complex a character, so utterly incapable of being defined or classified, that the task of positive legislation would be impracticable, if it were not almost absurd, to attempt it. What, for instance, could positive legislation do in cases of impeachment like the charges against Warren Hastings in 1788? Resort, then, must be had either to parliamentary practice and the common law in order to ascertain what are high crimes and misdemeanors, or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at one time or in one person which would be deemed innocent at another time or in another person. The only safe guide in such cases must be the common law. \* \* \* And however much it may fall in with the political theories of certain statesmen and jurists to deny the existence of a common law belonging to and applicable to the Nation in ordinary cases, no one has as yet been bold enough to assert that the power of impeachment is limited to offenses positively defined in the statute book of the Union as impeachable high crimes and misdemeanors.

Rawle, in his work on the Constitution, says:

The delegation of important trusts affecting the higher interests of society is always, from various causes, liable to abuse. The fondness frequently felt for the inordinate extension of power, the influence of party and of prejudice, the seductions of foreign states, or the baser appetite for illegitimate emolument, are sometimes productions of what are not inaptly termed political offenses (Federalist, No. 65), which it would be difficult to take cognizance of in the ordinary course of judicial proceeding.

The involutions and varieties of vice are too many and too artful to be anticipated by positive laws. (Rawle on Constitution, 200.)

In general, those offenses which may be committed equally by a private person as by a public officer are not the subjects of impeachment. (Id., 204.)

We may perceive in this scheme one useful mode of removing from office him who is unworthy to fill it, in cases where the people, and sometimes the President himself, would be unable to accomplish that object. (Id., 208.)

Chancellor Kent, in discussing the subject of impeachment, says:

The Constitution has rendered him [the President] directly amenable by law for maladministration. The inviolability of any officer of government is incompatible with the republican theory as well as with the principles of retributive justice.

If the President will use the authority of his station to violate the Constitution or the law of the land, the House of Representatives can arrest him in his career by resorting to the power of impeachment. (1 Kent's Commentaries, 289.)

Neither in Congress nor in any State has any statute been proposed to define impeachable crimes, so uniform has been the opinion that none was necessary, even in those States, few in number, where common-law crimes do not exist.

The assertion that "unless the crime is specifically named in the Constitution, impeachments, like indictments, can only be instituted for crimes committed against the statutory law" (vol. 6, Am. Law Reg. N. S., 269) is a view which has not been held at any time either in England or America.

It would certainly seem clear that impeachments are not necessarily limited to acts indictable by statute or common law, and that it would be impossible for human foresight to define in advance by statute the necessary subjects of impeachment. The Constitution contemplated no such impossibility. But the power has been limited as it is by the Constitution, and time has demonstrated that the limitations are sufficient.

The system of impeachment is to be governed by great general principles of right, and it is not probable that the Senate will ignore these.

The House has the sole power of impeachment, and the Senate has the sole power of trial. The Senate is the sole judge of what constitutes "other high crimes and misdemeanors." There are many misdemeanors in violation of official oaths and duty shocking to the moral sense and inconsistent with a pure administration of public office, and yet these misdemeanors may not violate any positive law. (2 Chase's Trial, 289; Peck's Trial, 309.)

I beg to call attention briefly to some of the cases illustrative of impeachable offenses. Mr. Speaker, I shall ask the indulgence of the House while I do this, for the reason that I know the membership here present, owing to their multitudinous duties before the committees and the departments, have not had time to read the books and authorities which they would desire to consult before voting here to-day, and in no spirit of vanity, but with apology, I shall offer this summary of these cases, to which I hope the Members will listen.

The first impeachment trial in the United States Senate was that of William Blount, a Senator of the United States from Tennessee. There it was held that the penalty in such case was expulsion from the Senate.

The next case was that of Judge Pickering. There he was charged with having made an order restoring a ship to the claimant without producing the certificate of payment of duties and tonnage tax as required by the act of Congress, and he was also charged with drunkenness and profanity on the bench. He was convicted on each charge and removed from office in March, 1804.

The next case was that of Samuel Chase, as associate justice of the Supreme Court of the United States. In this case he was not charged with an indictable offense, but was charged with misconduct in the

trial of certain cases. It was there insisted that no judge could be impeached or removed from office for an act or offense for which he could not be indicted, either by statute or common law, but after argument this defense was practically abandoned.

In 1830 Judge Peck, of the United States district court of Missouri, was impeached for imprisoning and suspending from practice an attorney who had published an article criticising an opinion rendered by the judge in a case tried in his court. The proposition that a judge can not be impeached except for an indictable offense was in this case repudiated.

In the next case, that of Judge Humphreys, of the United States district court for the district of Tennessee, it was charged that he had advocated secession in a public speech in Nashville, and other charges of similar import were included in the articles of impeachment. The report of the Judiciary Committee recommending impeachment in Judge Humphreys's case did not charge any indictable offense, but on the trial no doubt was expressed as to the right to convict on each of the articles.

Judge Addison was impeached in Pennsylvania in 1802, and his defense was that he had committed no act indictable at common law; but the Senate almost unanimously convicted him, utterly repudiating that as a defense.

In Massachusetts the rule is well settled in conformity with what seems to be the recognized doctrine in the Senate of the United States.

Among the cases tried with great learning and ability there is that of James Prescott, who was convicted before the Senate.

Mr. Blake, for the defense, insisted that impeachment is "a process which can only be resorted to for the punishment of some great offense against a known, settled law of the land." The prosecution maintained "that any willful violation of law, or any willful and corrupt act of omission or commission in execution or under color of office \* \* \* is such an act of misconduct and maladministration in office as will render him liable to punishment by impeachment."

High crimes and misdemeanors are punishable by impeachment when committed by civil officers of Government. These terms are used to express every offense inferior to felony, punishable by indictment; in its common acceptation it is applied to all of those crimes and offenses for which the law has not provided a particular name. Misdemeanors comprehend all indictable offenses which do not amount to felony, as perjury, battery, libels, conspiracies, and public nuisances. The Constitution resorts to the common and parliamentary law for its definition; and by the constitution of Massachusetts the senate is to hear and determine all impeachments made by the house of representatives against any officer of the Commonwealth for misconduct and maladministration in office. These words "high crimes and misdemeanors" have the same import as the words misconduct and maladministration, and the same as are employed by the constitution of Great Britain in its description of impeachable offenses, but they are subject to the limitations of the State law and constitution. (American and English Encyclopædia of Law, vol. 9.)

In its characteristics impeachment is quasi criminal. The House of Representatives sits as the grand inquest of the people and performs the duty of inquiring into the complaints made against the



judge, and if satisfied, as in the case of a grand jury, that any just ground exists for the removal of the judge from office, appoints its committee to prepare and present in formal order the charges of misconduct on the part of the judge to the Senate as the trial court—the judge and jury that shall pronounce upon the law and the facts, either sustaining the accusation or acquitting the respondent. The authority of the House is, therefore, inquisitorial and accusatory. Under our complex scheme of popular and representative government impeachment is the sole remedy that the people can invoke against a judge who is unjust, corrupt, tyrannical, oppressive, indecent, and unworthy. A Senator or Representative who takes part in the highest function of government, that of lawmaking, may be judged according to his “daily walk and conversation,” and be summarily expelled from the body of which he may be a member, or may in an election by the legislative representatives of the people or by the people themselves be retired to private life.

In the present case the people of Florida have invoked the extraordinary and sole remedy that exists for the trial and removal of a judge whom they contend is unworthy of his high office. It is for this House to say whether he shall be indicted here and required to undergo trial before the Senate as the high court of impeachment. I am sure that the Members of this House would refuse to condemn in any wise a just and upright judge, and am also sure that after they have examined carefully the charges affecting the honesty and integrity of this judge they will do justice between him and the people.

Judge Swayne is here charged with having violated section 551 of the Revised Statutes, which is as follows:

A district judge shall be appointed for each district, except in cases hereinafter provided. Every such judge shall reside in the district for which he is appointed, and for offending against this provision shall be guilty of a high misdemeanor.

The plain purpose of this statute is to require a judge to reside in his district. If the statute had made this requirement and said no more, its violation would have been a high misdemeanor, but Congress went further than necessary and denounced such failure as a high misdemeanor, as if to give special emphasis to this plain statutory requirement. Let us inquire what is residence.

Reside: (1) To make an abode for a considerable time; be settled as in a home; live; dwell; as they reside in Chicago.

\* \* \* \* \*

Residence: (2) The act of residing, or the state of being a resident.

\* \* \* \* \*

Legal residence: A phrase variously used, as to denote (1) the place where one's home or family is, (2) fixed and permanent abode or domicile, (3) an abode of sufficient length to confer political rights or subject to personal taxation, or (4) permanency of abode more marked than mere lodging or boarding, but not fixed and final. (P. 1547. Funk & Wagnall's Standard Dictionary of the English Language, 1899.)

“Residence” and “domicile” are different things. They are not convertible terms or synonyms. (21 American and English Encyclopedia of Law, 124.)

There is a broad distinction between a resident and a citizen. A man may be a resident of one State and a citizen of another State. (Dart v. Bates, 51 Ill., 349.)

A residence is a fixed and permanent abode or dwelling place for the time being, as contradistinguished from the mere temporary locality of existence. (Anderson's Law Dictionary.)



To reside is to dwell permanently or for a length of time; to have one's home or settled abode; to abide continuously or for a lengthened period. (Encyclopedic Dictionary.)

A resident of a place is one whose place of abode is there and who has no present intention of removing therefrom. (21 American and English Encyclopedia of Law, 122.)

Residence is a question of fact. (Witbeck v. Hardware Co., 188 Ill., 154.)

In order to acquire a residence, there must be a settled fixed abode and an intention to remain permanently, at least for a time, for business or other purposes. (Supervisors v. Davenport, 40 Ill., 197.)

And in the English and American Encyclopedia, page 691, it is stated:

It has been said that the word "residence" is an elastic term of which an exhaustive definition can not be given, but that it must be construed in every case in accordance with the object and intent of the statute in which it occurs.

In the case of *The People v. Owen* (29 Colo., 535) it was held that when a statute requires a district judge to reside in his district the residence contemplated was an actual as distinguished from a legal or constructive residence.

In *Mitchell v. The United States* (21 Wall. Repts., 353) the court said:

A domicile once acquired is presumed to continue until it is shown to have been changed. Where a change of domicile is alleged the burden of proving it rests upon the person making the allegation. To constitute the new domicile two things are indispensable: First, residence in the new locality, and, second, the intention to remain there. The change can not be made except *facto et animo*. Both are alike necessary. Either without the other is insufficient. Mere absence from a fixed home, however long continued, can not work the change. There must be the *animus* to change the prior domicile for another. Until the new one is acquired, the old one remains. These principles are axiomatic in the law upon the subject. \* \* \* Among the circumstances usually relied upon to establish the *animus manendi* are: Declarations of the party, the exercise of political rights, the payment of personal taxes, a house of residence, and a place of business. All these indicia are wanting in the case of the claimant.

The principles laid down in this case are affirmed in the following cases:

*Desmare v. United States* (93 U. S., 609, 612; 23 L., 960), an identical case; *Chambers v. Prince* (75 Federalist, 180), holding payment of taxes not evidence against repeated declarations of intention to return; *Marks v. Marks* (75 Federalist, 325), but holding said facts evidence tending to establish citizenship, not conditions thereof; *Fulham v. Howe* (60 Vermont, 359, 361, 14 At. L., 657), admissible to show domicile.

Doubtless the purpose of the statute was to secure the presence of the judge for the benefit and convenience of parties litigant, lawyers, and others having business before him and in his court. Long and repeated absences from his district were also, doubtless, in the judgment of Congress, calculated to put those having business before the judge and the court to inconvenience, delay, and expense, which sometimes amounted to a denial of justice. The statute is plain and mandatory, and no excuse can shield the judge from a failure to reside in his district.

The evidence tends to show that when the boundaries of the district were changed so as to exclude St. Augustine, Judge Swayne

was keeping house at St. Augustine. In 1894, by act of Congress, St. Augustine and Jacksonville were transferred to the southern district, thus leaving Pensacola and Tallahassee as the only places in which a United States court is held in the northern district. After this change in the boundaries of the district was made Judge Swayne ceased to keep house at St. Augustine and stored his furniture. He says he was advised by some of his friends that the next or succeeding Congress would be Republican and that the boundaries of his district would be restored. After having stored his furniture he attended the sessions of the court at Pensacola and Tallahassee, boarding at different hotels or boarding houses.

The evidence shows that he has never remained in his district until this impeachment proceeding was inaugurated more than upon an average of 60 days in each year, and substantially he was in the district at no time except when the court was in session. Whenever he went away from Florida he left directions with his clerk that he would come back if needed. Letters were sent to him at Guyencourt, Del., and he spoke of that place as his home, and to that place he returned when his courts ended in Florida, and again when his courts ended in other States where he had been designated to hold court. He had live stock and personal property in Delaware. His family, as a rule, lived there. They lived abroad one year. In 1900 his wife rented a house in Pensacola and lived there with him a portion of the winter, until about the time of the Christmas holidays, when she went North. Rent was paid for this house for a year or a little more, but it was not again occupied by him or his family.

He says that when he first went to Pensacola he requested the clerk of the court to find a suitable house for him to rent or to buy. The clerk never found the house, and the same witness testified that he endeavored to have a house built for Judge Swayne, but he did not succeed. Judge Swayne testified that when he first went to Pensacola he asked a bank officer to have his name placed on the voters' registry. This was not done. He was never registered in the northern district of Florida, never paid taxes, never voted, nor did he in any manner exercise the rights of citizenship. He never inquired as to whether he had been registered or not. A number of witnesses who are resident citizens of Pensacola, and had been such prior to 1900 and ever since, testified that they knew generally the citizens and residents of the town of Pensacola, and in effect that Judge Swayne never was a resident of that place.

Among these witnesses were reputable professional and business men engaged actively in their pursuits in Pensacola during the time of Judge Swayne's incumbency as judge of the northern district of Florida as presently constituted. In his first testimony Judge Swayne never asserted or claimed that he had ever acquired actual residence in the northern district of Florida as it is now constituted. Let me read what he said to the committee last spring:

Mr. PALMER. Judge Swayne will proceed and will make his statement to the stenographer.

Judge SWAYNE. I was born in 1842 in Delaware, and resided there with my parents. I read law in Philadelphia and was admitted to the bar and took my degree of B. A. in the Pennsylvania Law School. I practiced law there, with the exception of one year, until 1885, when I removed with my family to Sanford, Fla. I practiced law there until 1887, when I was burned out, when I removed with my family to the

county seat, where I was residing when appointed to the bench on May 17, 1889. I took the oath of office June 1, 1889.

Mr. PALMER. That was a recess appointment, was it not?

Judge SWAYNE. Yes, sir; I can not tell positively what date I was confirmed. The confirmation came up before Congress the following December, and in consequence of the election trials, which had taken place in the meantime, the confirmation did not occur until April 1, 1890. I addressed the Senate on the subject, which can be seen by the Congressional Record of the first session of the Fifty-first Congress, volume 21, February 21, 1890, and which was a very interesting debate, showing exactly what the questions were. In the summer of 1890 I move to St. Augustine. I think we arrived there the 1st of October, having been North on a vacation, as was the custom of most of the Federal judges, perhaps of all of them, to take such vacations.

I resided at St. Augustine with my family, and about the time when the bill making the change in the district which has been spoken of received President Cleveland's signature, after a consultation with my friends in Jacksonville and vicinity they urged me not to move my furniture nor my family, saying that the next Congress would be Republican and the district would be placed back in its usual form. My furniture was allowed to remain, and I went at once to Pensacola. I found a leading Democratic friend there, and I stated to him that I had concluded not to move my furniture there, and it was all well understood by the people there. I was there for a considerable period, sometimes early in October and sometimes a little later, and I was there all the time I was needed unless holding court somewhere else. By special assignment for five months I was in the court at Dallas. In 1890, in July, I went with my family to Europe. In the spring, in 1900, I was holding court at Birmingham, where I had a great many friends, and after that I went to Pensacola and rented a house.

Mr. GILLETTE. Was that in 1890?

Judge SWAYNE. That was in 1900. I think I moved there early in October. I then went North with my wife and son to spend Christmas week in Wilmington. On the 12th of the following January I was in Tyler, Tex., and two days later I got a telegram about the breaking down of my son's health, but I stayed on until February and finished the case, and then came back, as his condition was very critical and serious, and after a week or two, perhaps, I returned and held court and finished what I had to do and get back to Delaware that spring. In February, 1903, I was again in Tyler, Tex., and went early to Wilmington. In the spring we bought the property that had been formerly occupied by Judge A. C. Blount, in Pensacola, and moved in it the 1st of October.

I never was a registered voter, and I have not voted in 14 years. When I left Delaware I moved my domicile, and have taken no part in political questions arising in the States of Delaware or Florida. Mr. Turner, whom Mr. Laney said he did not know, was an attorney for my matters for four years. My father died in 1889 and left property to my mother for life. She is still living, and the property comes to me and my sister as a residuary legatee at the time of her death. But that has never been my home, but I have spent my summers there mostly, arriving sometimes in June and sometimes in July, and from that point I could always reach Pensacola in 36 hours, and the record will show I have always been there to attend to anything of a serious nature.

My recollection is that no one has ever suffered because of my absence, and I can offer testimony which will entirely clear up that proposition. My recollection is that, from the testimony taken, the most the committee has on this point before them is that counsel may have been sometimes inconvenienced in the summer time during my absence on vacation. As near as I can recollect, these are the facts which cover the period since I have been on the bench.

Mr. GILLET. Did the business of the court suffer because of your absence?

Judge SWAYNE. I never heard of it.

Mr. GILLET. The summer time was the time usually taken for vacations?

Judge SWAYNE. Yes; I so understand it. Another suggestion was that the only way to get rid of me would be to do away with the district entirely. But I do not suppose the parties care very much whether the office is abolished or not, just so long as they can get the individual.

Let us note—

1. That he did not move his furniture nor his family, for the reason that he thought that the next Congress would restore his district back to its original form.

2. That he told a friend at Pensacola that he had concluded not to move his furniture, and that it was well understood by the people there.

Why? Because he thought the district would be restored and it would be unnecessary to remove to Pensacola. That he was there at Pensacola for a considerable period, sometimes early in October, sometimes a little later, but he was there all the time—that is the language—he was needed, unless holding court somewhere else. That is his excuse for nonresidence, “that I stayed there all the time when I was needed, and when I was not needed I was at Guyencourt, Del.,” or somewhere else without the boundaries of that district where he was required to actually reside.

3. That he was there (at Pensacola) for a considerable period—sometimes early in October, sometimes a little later—and was there all the time “I was needed, unless holding court somewhere else.”

4. In July, 1890, he went with his family to Europe. In 1900 he held court at Birmingham, and after that went to Pensacola and rented a house.

5. “I think I moved there early in October (1900).”

6. He then went North with his wife and son to spend Christmas in Wilmington.

7. January 12 he was at Tyler, Tex., and stayed there, holding court until February.

8. Then, after a week or two perhaps, “I returned and held court and finished what I had to do and got back to Delaware that spring.”

9. In this statement he is silent as to his whereabouts after he went to Delaware in the spring of 1901 and until February, 1903.

10. He was again in Tyler, Tex., and went early to Wilmington.

11. In the spring of 1903 he bought a house from Blount in Pensacola and moved in the 1st of October.

Oh, but he had wind of these impeachment proceedings when that was done!

12. “But that (Guyencourt) has never been my home, but I have spent my summers there, mostly arriving sometimes in June and sometimes in July, and from that point I could reach Pensacola in 36 hours, and the record will show that I have always been there to attend to anything of a serious nature.”

13. “My recollection is that no one has ever suffered from my absence \* \* \*.”

14. “My recollection is that from the testimony taken, the most the committee has on this point is that counsel may have been sometimes inconvenienced in the summer time during my absence on vacation.”

15. “As near as I can recollect these are the facts which cover the period since I have been on the bench.”

16. Question by Mr. GILLET. “Did the business of the court suffer because of your absence?” Answer by Judge Swayne: “I never heard of it.”

Here is a mandatory statute requiring residence, and he thinks he can excuse himself for the violation of that statute by saving as a pretext that the business of the court never suffered, or, if it did, he never heard of it.

We find from this testimony that Judge Swayne did not acquire a residence at Pensacola when he first went there to hold court after the district was changed. He stored his furniture at St. Augustine, believing that next session of Congress would restore the original boundaries of his district. In his last statement made before the

subcommittee of the Judiciary Committee in November, last month' he said:

Many of my friends suggested that the next Congress might change the boundaries of the district back so as to put St. Augustine again in the district, and that I should not move furniture until that was determined.

And then goes on to say:

But I announced that it was my intention to move my residence to Pensacola, and I then and there made Pensacola my residence.

His first testimony clearly indicated an intention on his part not to change his residence, and that he stored his furniture at St. Augustine to await the restoration of his district to its original boundaries, which included St. Augustine.

And then in his second testimony, given after the committee of this House had reported that he was a nonresident of the district as now constituted, and after he had been heard on the subject, he goes on to say:

I came to the Escambia Hotel in Pensacola, Fla., and registered as follows: "Charles Swayne, City," and announced to my friends there repeatedly that I was now a resident of Pensacola.

It is very strange that he omitted to make this statement when his nonresidence of the district was charged against him last spring and when he then testified, and it is also strange that he was unable to prove that he had announced repeatedly that he was a resident of Pensacola. If he had become a resident of Pensacola, why was it necessary for him to repeatedly announce the fact? If he did repeatedly make this announcement, it was done because he knew he had not in fact acquired residence there, and he was manifestly endeavoring to establish a residence which he knew he had not acquired by making a declaration of his residence.

Every indicia of residence on the part of Judge Swayne at Pensacola is totally lacking in this case except the fact that he held court there, was there throughout the holding of the court, and that his wife stayed there with him three months; that he rented a house for about a year. There is an entire absence of evidence of residence. Now, suppose a neighbor of the Speaker of this House were called upon to state where the residence of the Speaker is. Would there be any difficulty in his answering that question? He would say, it is in Danville, Ill. How do you know? Why, I know he owns a home there; I know his family lives there; I know that after Congress adjourns he goes there and stays there; I know that his business is there; I know that he pays his taxes there, personal and real, and I know that his property is there—I know all these things; I know that he votes there. But in this case there is an entire absence of any indications of residence.

Now, residence being a question of law and fact, it is difficult to frame a proper legal question to a witness on that subject; but the witnesses all testified, in effect, and we are authorized to draw that conclusion from the testimony—not all of the witnesses, but a large number of them, and their names will be found there in the printed book of testimony—that he was not a resident of Pensacola, and they mentioned many of these circumstances to which I have alluded to prove that he was not a resident of that place.



Adverting to the declarations, it would not be necessary for the gentleman from California to go about the streets of his town announcing that he is a resident; it would not be necessary for the Speaker of this House to go about the streets of Danville, up and down them, crying, "I am a resident of Danville." It is a plain fact, and it is not necessary to repeatedly declare. It is unnecessary for an honest man to repeatedly say "I am honest," nor is it necessary for a virtuous woman to constantly proclaim her virtue. If she did, I might say, in the language of the Shakespearean character, "The lady doth protest too much, methinks."

In *The People v. Estate of Moir* (207 Ill., 186) it was said:

In this case the evidence relied upon to show a change of residence of Mr. Moir from Oquawka to Burlington consisted wholly of the proven declarations of the deceased. While such declarations are admissible in evidence they are not considered a high class of evidence, and when the acts of the party are inconsistent with his declarations the declarations are entitled to but little weight. (*Kreitz v. Behrensmeyer*, 125 Ill., 141.)

And, again, it was held in *Kreitz v. Behrensmeyer* (125 Ill., 197):

That declarations in regard to present or future domicile or future residence are admissible in evidence, but that they are the lowest species of evidence, and that such declarations may be disputed by his acts.

Now, Judge Swayne's first testimony is set out in the first report made by the committee on this subject, and you will observe from that that he did not claim to have acquired an actual residence there. He framed a series of excuses why he had not acquired that residence, and then he undertakes to justify his nonacquisition of the residence by saying that no business ever suffered because of his failure to so acquire a residence; that nobody suffered any detriment because of his absence from the district. He never asserted that he had acquired the actual residence. Now, I lay down this proposition, that no man can have a legal or constructive residence in any community until he has first acquired an actual residence. An actual residence can be acquired in the different ways that I have mentioned, or, rather, the different circumstances which I have mentioned in the case furnish evidence that he has a residence in that place. Now, did he ever acquire an actual residence there? I challenge any man to name when and how he acquired it. Then I will interpose against his assertion these facts and negatives. I will interpose his excuses, by which he seems to have thought that he could exculpate himself for nonrequirement with the statute by giving these excuses.

From 1896 to 1904 his court was open for business 492 days and no more, being an average of  $61\frac{1}{2}$  days per annum for 8 years. There was no testimony to show how many days the court was open during the years 1894 and 1895.

Except for having been in Pensacola and Tallahassee during the sittings of his court, the occupancy of a house for about three months at one time with his family, and his request of a bank officer that his name be put on the voters' register, and his request that a suitable house be found for him to rent or buy, and that one be built for him, there is nothing to show that he ever acquired an actual residence in the district, either at Pensacola or Tallahassee. The evidence offered in his defense on this point can be no more than excuses for not having complied with a plain statute commanding him to reside within the district.

A man's legal residence is where, after having gained an actual residence, he intends to reside, but he can never gain a legal residence without having first acquired an actual residence. The statute requires an actual and legal residence. His declarations of intention to acquire a residence in the district can not constitute a compliance with the statute. The purpose of this statute was manifestly to require the physical presence and actual residence of the judge within his district, where the Government and the people who had need of his official services could have them. It is evident that Judge Swayne saw the force and effect of this statute, which he had so long defied, after the present impeachment proceedings were inaugurated, for since they were begun he seems to have endeavored to acquire residence. But this can not excuse him. The impeachable offense had been committed and it can not be cured by a subsequent act.

His request of a bank cashier to be put on the list of registered voters, which was not done and about which he made no subsequent inquiry, and what he said to the witness about finding a suitable house for him to buy or rent, and what he also said to the same witness about having him a house built, in their nature amount to no more than a mere declaration on his part of a vague intention at some time to acquire a house in one way or the other at Pensacola. I have already adverted to his statement that he repeatedly said that he was a resident of Pensacola.

In view of the facts in this case it may be well said that these declarations as to residence, while admissible evidence, are the lowest species of evidence, and that such declarations are indeed disputed by his acts. I refer again in this connection to *Kreitz v. Behrensmeyer*. (125 Ill., 197.)

And while on the subject of his declarations it is well to note that Judge Swayne, according to the testimony of several of the witnesses, often spoke of Delaware as his home. Let me note what he said in his last testimony before the committee last month:

By Mr. PALMER:

Q. You say you rented the Simmons cottage in October of what year?—A. 1900.

Q. Now, I recollect before that it was testified you occupied the cottage for a few months, and then went north about Christmas time. Is that correct?—A. That is correct.

Q. How many months, in point of fact, did you and your family live in the Simmons cottage?—A. I do not know.

Q. Can you give any estimate of the number of months you lived in the Simmons cottage?—A. I can not. I know that my son was taken seriously sick; broke down in college from nervous prostration, and I had to hurry home to him.

Q. You mean, when you say "hurry home," to Guyencourt, Del.?—A. He was in Wilmington, Del., with his sister, and I went up there to Delaware, where I was born, and spent all the time I could with him, and came back to hold court.

At what time, until after these impeachment proceedings were begun, did Judge Swayne acquire a legal residence in the northern district of Florida? Where and how did he acquire it? He certainly did not acquire such residence by boarding there the 60 days during the sessions of his court. He certainly did not acquire it by the act of giving up housekeeping at St. Augustine and storing his furniture, believing that the district would be restored to its original boundaries, so that it would be unnecessary for him to move away. He certainly did not acquire a legal residence at Pensacola by asking a bank cashier to have him registered as a voter. He certainly did not

acquire such residence by asking the clerk of his court to find a suitable house for him in Pensacola, which house was not found.

I repeat that at most the testimony in his behalf shows that he had a vague intention at some undetermined future time to reside in Pensacola when he could buy or build a house, but the evidence shows conclusively that he was indifferent to a compliance with this statute until these proceedings were begun. Certainly the fact that he held court in other States does not furnish any evidence that he had a residence in the northern district of Florida. We submit that his excuses and his requests to be registered and to find him a suitable house do not exculpate him. This is a statute highly penal and must be strictly construed. It enjoins the imperative duty of residence in the district. The evidence shows that he has failed or refused to obey this law according to its plain intent, and he should be impeached.

Now, Mr. Speaker, upon the charges of having wrongfully imprisoned Simeon Belden and E. T. Davis and W. C. O'Neal, and for his appointment of Tunison a United States court commissioner I shall, doubtless, if this resolution be adopted, take occasion to make some remarks showing that charges of impeachment should be predicated upon those matters, but I have already trespassed longer than I intended upon your patience, and I now come to the last proposition, which I believe the gentleman from Pennsylvania urged for your consideration. Now, all of the committee agree that he should be impeached upon this ground—they differ as to some of the other grounds—the majority holding that he should be impeached upon several grounds.

I desire to call the attention of the House to the fact that all of the committee agree that he should be impeached upon the ground that I have just referred to.

I regret that the gentleman from California has gone, as I believe he concurred in that conclusion.

Mr. LITTLEFIELD. The gentleman from California is present.

Mr. CLAYTON. I would like his attention.

Mr. LITTLEFIELD. He is listening to you.

Mr. CLAYTON. He does not dispute it, then?

Inasmuch as it is agreed upon, and the House doubtless has not had an opportunity to read this testimony since it was taken a few days ago, I desire now to recite briefly the law and the evidence in support of it.

The act of Congress of 1871, Revised Statutes, section 596, provides, when a district judge is assigned to hold court of his district, that "it shall be the duty of the district judge so designated and appointed to hold the district or circuit court aforesaid without any other compensation than his regular salary as established by law."

And the act of March 3, 1881, 21 Statutes at Large, 454, provides that "so much of section 596, Revised Statutes, as forbids the payment of expenses of district judges while holding court outside of their districts is hereby repealed."

The act of June 11, 1896, 29 Statutes at Large, 451, provides that—

For reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed ten dollars per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in settlement of his account with the United States.

It is his expenses while attending court. The gentleman from Iowa [Mr. Lacey] a while ago fell into error, it seemed to me, when he seemed to think that the construction to be put upon this statute was that the judge was to have pay for his attendance. This statute provides, I contend, for expenses for traveling and expenses while in attendance, and not for compensation for holding court. Now, I submit it to any lawyer if the statute does not mean that—for reasonable expenses for travel and reasonable expenses for attendance while attending court—his expenses incurred necessarily in the process of his attendance upon the court; not compensation. It would be a sweep of the imagination to put any other construction upon the statute.

Undoubtedly the statute means actual expenses of travel and actual expenses incurred while attending court, and the word reasonable, instead of being an enlargement or liberalization of the statute, is a limitation, and restricts the actual expenses to reasonable actual expenses.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. LITTLEFIELD. I ask unanimous consent that the gentleman may be permitted to complete his remarks.

The SPEAKER pro tempore. Unanimous consent is asked that the gentleman may have time to complete his remarks. Is there objection? [After a pause.] The Chair hears none.

Mr. CLAYTON. On the hearing of the testimony by the subcommittee of the Judiciary Committee it was admitted by the counsel of Judge Swayne for him, the judge being present, that Judge Swayne had made and signed the certificates prescribed by law for the following sums:

Name of marshal paying voucher.	Account No.	Place of holding court.	Period covered by voucher.	Amount paid.
Guillotte.....	9349	Baton Rouge, La.....	Apr. 19 to May 4, 1895.....	\$146
Do.....	9349	New Orleans, La.....	May 13 to May 31, 1895.....	179
Love.....	18650	Waco, Tex.....	30 days from Nov. 18, 1895....	300
Do.....	18650	Dallas, Tex.....	40 days from Jan. 21, 1896....	400
Do.....	18650	Graham, Tex.....	2 days from Mar. 9, 1896.....	20
Do.....	26252	Waco, Tex.....	18 days from Apr. 27, 1896....	180
Do.....	26252	Dallas, Tex.....	36 days from May 18, 1896....	360
Do.....	29482	Waco, Tex.....	28 days from Nov. 18, 1896....	280
Do.....	35513	Dallas, Tex.....	42 days from Jan. 11, 1897....	420
Do.....	35513	Fort Worth, Tex.....	12 days from Mar. 1, 1897.....	120
Do.....	36910	Waco, Tex.....	23 days from Apr. 20, 1897....	230
Do.....	36910	Dallas, Tex.....	39 days from May 17, 1897....	390
Guillotte.....	61252	New Orleans, La.....	19 days from Jan. 1, 1898.....	190
Do.....	44704	do.....	40 days from Jan. 20, 1898....	400
Do.....	44704	do.....	11 days from Mar. 1, 1898.....	110
Do.....	44704	do.....	10 days from Mar. 11, 1898....	100
Do.....	44704	do.....	10 days from Mar. 22, 1898....	100
Do.....	61252	do.....	10 days from Apr. 1, 1898.....	100
Do.....	61252	do.....	15 days from Apr. 16, 1898....	150
Do.....	61252	do.....	10 days from May 1, 1898.....	100
Do.....	61252	do.....	19 days from May 11, 1898....	190
Fontellieu.....	54281	do.....	19 days from Nov. 21, 1898....	190
Do.....	54397	do.....	10 days from Jan. 30, 1899....	100
Do.....	54397	do.....	10 days from Feb. 8, 1899.....	100
Do.....	54397	do.....	10 days from Feb. 18, 1899....	100
Do.....	54397	do.....	10 days from Feb. 28, 1899....	100
Do.....	54397	do.....	10 days from Mar. 10, 1899....	100
Cooper.....	56988	Birmingham, Ala.....	28 days from Apr. 4, 1899.....	280
Do.....	56988	do.....	19 days from May 22, 1899....	190
Do.....	60217	Huntsville, Ala.....	29 days from Oct. 9, 1899.....	290
Fontellieu.....	70206	New Orleans, La.....	10 days from May 24, 1900....	100
Do.....	70206	do.....	10 days from June 2, 1900.....	100
Do.....	70206	do.....	5 days from June 12, 1900....	50
Cooper.....	69592	Birmingham, Ala.....	29 days from Sept. 3, 1900....	290
Do.....	73109	do.....	8 days from Sept. 3, 1900....	80
Grant.....	71960	Tyler, Tex.....	31 days from Dec. 3, 1900....	310
Cooper.....	78334	Birmingham, Ala.....	21 days from Sept. 2, 1901....	210
Houston.....	93964	Tyler, Tex.....	41 days from Jan. 12, 1903....	410

I will not trespass upon the time of the House by reading the testimony, which was excellently stated and summarized by the gentleman from Pennsylvania [Mr. Palmer], but I will here insert it in the Record.

And it was admitted that he received payment of \$10 per day as his reasonable expenses for travel and attendance for each day that he held court out of his district. This account shows that he charged \$10 per day for each day.

The testimony showed that he paid for board and lodging at Waco, Tyler, and Dallas, Tex., from \$1.25 to \$3 per day, and that his traveling expenses to and from Pensacola to each of these places in Texas could not in any case have exceeded \$50. I read from the testimony:

Witnesses with whom Judge Swayne boarded at Fort Worth, Dallas, Tyler, and Waco, in hotels and boarding houses, during the times when he held court in those places, testified in part as follows:

Samuel McIlhenny, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Give your name in full.—A. S. C. McIlhenny.

Mr. HIGGINS. What is your first name?

The WITNESS. Samuel.

By Judge LIDDON:

Q. Your residence?—A. Dallas, Tex.

Q. Your business or occupation?—A. I am manager of the Oriental Hotel.

Q. How long have you been such manager?—A. Eight years.

Q. Were you such manager in January, 1896?—A. No; I was in the office in 1896. I was connected with the house.

Q. In January, 1896?—A. Yes, sir.

Q. Did you know Judge Charles Swayne?—A. Yes, sir.

Q. How long have you known him?—A. Well, I did not know the judge until I went to the hotel. I was in a former hotel there. He was there when I first went to the hotel.

Q. He was at the Oriental when you first went there?—A. Yes, sir.

Q. You say that was when?—A. In 1896.

Q. Do you know the date in 1896?—A. The first part of the year; I don't know exactly the date—either January or February. In January, I think it was, some time.

Q. In January?—A. Yes, sir.

Q. Do you know whether Judge Charles Swayne was at Hotel Oriental in January, 1896?—A. He was there when I went there. I went there in the latter part or middle part of January.

Q. Do you know when he left?—A. No; I do not.

Q. Can you refresh your memory from that memorandum—did you make that [submitting paper]?—A. The cashier or bookkeeper made that—

Judge LIDDON. I submit this as an exhibit:

#### EXHIBIT F.

DALLAS, TEX., March 5, 1896.

*Mr. Chas. Swayne to the Oriental, Dr.*

[S. E. McIlhenny, manager.]

March 1 to 3/6, 6 days.....	\$16. 00
For board month of Feb. 9 to 2/29, 20½ days.....	68. 35
Feb. 1 to 2/9, 8½ days.....	19. 80
Express, 2/3, .60.....	. 60
Laundry, 2/12, 1.30, 1.10; 3/5, .75.....	3. 15
Wine, etc., 2/26, .40.....	. 40
Telegrams, 2/24, 1.15.....	1. 15
Drugs, 2/6, 1.35.....	1. 35
	<hr/>
	110. 80
3/6, cr. by rebate on rate.....	\$13. 80
3/6, cr. by cash.....	97. 00
	<hr/>
	110. 80



The WITNESS (continuing). But I looked over it.

Q. Is that his handwriting?—A. Yes, sir.

Q. He is in charge of the books there?—A. Yes, sir.

By Mr. PALMER:

Q. Did you examine it to ascertain if it was correct or not?—A. Yes; I looked over it when he made it off the board book.

By Judge LIDDON:

Q. Do you know how much he paid for his board there in January, 1896?—A. I do not; only from this memorandum.

Q. Can you tell from that memorandum?—A. Yes, sir.

#### EXHIBIT G.

DALLAS, TEX., *January 31, 1896.*

*Mr. Chas. Swayne to the Oriental, Dr.*

[S. E. McIlhenny, manager.]

For board month of Jan. 20 to Jan. 31, 1896.....	\$26.80
Laundry, 20/95.....	.95
Wine, etc., 20/55.....	.50
	<hr/>
	28.25
Cr. Feb. 5, 1896, by chk.....	28.25

Q. How much was it?—A. According to that, in January he paid \$28.25. The books correspond with this statement exactly; that is, in January.

Q. He paid \$28.25?—A. Yes.

Q. Now, were you connected with the same hotel—you said you were—in March, 1896?—A. Yes, sir.

Q. Do you know whether Judge Swayne stopped at that hotel, then, in February or March, 1896?—A. Yes, sir.

Q. Do you know how much he paid?—A. He paid cash \$97.

Mrs. Annie E. Russell, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Where do you live?—A. Tyler, Tex.

Q. How long have you been there?—A. About 22 years.

Q. You are engaged in running a hotel, or have been, or a boarding house there?—A. No, sir.

Q. Have not at all?—A. No, sir; we just had a very large house, and during this court Mr. Butler came and asked me if I would take some of the judges and lawyers, and I told him I would. We had a large house and were renting the rooms. I had only been there about two years.

Q. That was at Tyler?—A. Yes, sir.

Q. Did Judge Swayne ever board with you there?—A. Yes, sir.

Q. Do you know the date?—A. No, sir; I did not make any memorandum of it, but it was during that trial of the bank there.

Q. In the United States court room?—A. Yes, sir.

Q. Do you know in what year it was?—A. It was last year.

Q. 1903?—A. Yes, sir.

Q. Do you know what part of the year—the early part or the latter part?—A. It was January, as well as I can recollect.

Q. Do you know how long he stayed with you?—A. From the beginning until the end. I did not keep any memorandum of it at all. He was there from the time the court opened until it closed.

Q. You do not know how long; could not approximate the time?—A. I think it was about six weeks or more; I am not sure about that.

Q. Do you know what rate of board he paid you?—A. Yes, sir; \$1.25 a day.

Q. Did that include lodging?—A. Yes, sir.

Mr. CLAYTON. That included table board and lodging?

A. Yes, sir; everything.

By Judge LIDDON:

Q. \$1.25 a day?—A. Yes, sir.

Q. In the early part of the year 1903 he was there from four to six weeks?—A. He was there during the whole term of court.

Susan Lyle Downs, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Where do you reside?—A. Waco, Tex.

Q. You are engaged in the business of keeping a boarding house or hotel there?—

A. A private boarding house.

Q. How long have you been so engaged, Madam?—A. Seventeen years.

Q. Do you know Judge Charles Swayne?—A. Yes, sir.

Q. Has he ever been a guest of your house?—A. I think three terms of court. Of course, I am not sure, but that is my recollection.

Q. Three terms?—A. Three terms of court.

Q. Can you fix the date?—A. No, sir; I can not.

Q. Can you say whether it was since 1895?

Mr. HIGGINS. Speak of your own knowledge and without suggestion.

A. I really could not answer as to the year he was there. I could not; do not.

By Judge LIDDON:

Q. You can not say how many years, or approximate how many years ago?—A. If you can tell when Judge Rector was disabled, I could tell you, but otherwise I can not.

Q. It was while he was holding United States court?—A. Yes, sir.

Q. And he stopped with you three terms?—A. Yes, sir.

Q. Did you ever know him to hold United States court there at any other time except the three times he stopped with you?—A. No; I don't remember it.

Q. Do you know how long he stopped with you at the time he was there?—A. No, sir; I do not. I know he was at the term of court, but I never made any memorandum of it.

Q. During a term of court three times?—A. I think so.

By Mr. CLAYTON:

Q. Do you mean the term while the court was lasting, the whole session of the court?—A. Yes.

Q. Not just for a day and then a day?—A. Oh, no.

By Judge LIDDON:

Q. You can not approximate how long he would stay at a time?

Mr. PALMER. About?

A. I really do not know.

By Mr. CLAYTON:

Q. Was he a transient, or did he stay a day or half a day?—A. He stayed during the whole term. I suppose probably from three to five weeks possibly.

Judge LIDDON. At a time?

A. Yes.

Mr. CLAYTON. That is, to the best of your recollection, from three to five weeks?

By Judge LIDDON:

Q. Do you know what rates you charged him for board?—A. At the rate of \$40 for himself and \$65 for himself and wife.

By Mr. CLAYTON:

Q. What is that, per month?—A. Per month. I do not want to do any injustice here. That is to the best of my knowledge.

By Judge LIDDON:

Q. And \$65 per month when he had his wife with him?—A. Yes, sir.

Q. Are those your best rates?—A. Yes, sir.

Q. All you ever charged?—A. Yes, sir.

Q. You said he was there sometimes without his wife?—A. I think two terms without Mrs. Swayne; one term with her.

Q. When he was there without her it was \$40 a month, or \$65 for the two?—A. Yes, sir.

Q. That included room as well as board?—A. Room and board.

Q. Was it winter or summer that he was there?—A. I am not sure whether it was two fall terms or two spring terms of court. There was one term and then two of the other.

Let me again say that the statute which allowed these expenses seems to be too plain to admit of any double construction. "Reasonable expenses \* \* \* not to exceed \$10 per day each," means actual expenses incurred, and there is but one qualification, and that is that the expenses shall be reasonable and not unreasonable,

although actual expenses reasonable; that is, necessary and ordinary expenses.

In *Dunwoody v. United States* (22 C. Cls., 269, 278) it was held:

"Expenses," as used in an act appropriating money for salaries and expenses of the National Board of Health, means those expenses which are necessarily incident to the work directed to be done, including payment for clerk hire or office rent.

And in *Heublein v. City of New Haven* (54 Atl., 298, 299; 75 Conn., 545) it was held that—

The word "expenses," as used in a city charter providing that the selectmen shall receive a certain sum per hour for the time spent in their duties and their necessary expenses, means something due to the selectman for money paid by him or debt incurred by him necessarily in the performance of his duty.

I read in the hearing of the House these cases construing statutes allowing expenses and fees, and I promised the House at that time to refer to another case, that of *Shields against The United States*, construing a statute allowing fees. In the *United States v. Shields* (153 U. S., p. 91) it is said:

It is true in the present case that the district attorney has made no claim for a per diem allowance for Sunday, but it certainly can not be held that this left it optional with him to waive his per diem fee and take mileage to and from his home in lieu thereof, as a matter of pleasure or convenience to himself, especially when the mileage exceeded the per diem allowance. Fees allowed to public officers are matters of strict law, depending upon the very provisions of the statute. They are not open to equitable construction by the courts nor to any discretionary action on the part of the officials.

I believe that Judge Swayne has, under the guise and pretense of alleged expenses, charged the Government on different occasions very material sums of money in excess of what his expenses were. Certainly this is a grave misconduct in office. In the ordinary and parliamentary sense it constituted a high misdemeanor and an impeachable offense. It was dishonest and corrupt and authorizes his impeachment, conviction, and removal from office.

But while he is impeachable for this offense without any special statute denouncing such conduct to be a crime, it so happens that there is a positive law forbidding such conduct and making it a crime. Section 5438 of the Revised Statutes covers this case, and it is in this language:

Every person who makes or causes to be made, or presents or causes to be presented for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certification or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed

in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars.

And in *The State v. Moore* (57 Tex., 320) and *Wharton County v. Ahldag* (84 Tex., 15) the doctrine is there also maintained that statutes allowing fees must be strictly construed and against the claimant.

Now, Mr. Speaker, as the time is limited and at the suggestion of the chairman of the committee, I shall not proceed with all I had to say upon this subject. I thank the House for its considerate attention.

Mr. HUNT. Will the gentleman give us information as to whether Judge Swayne was a resident of the State when he was appointed judge?

Mr. CLAYTON. He said at the time he was appointed that he had a home at Kissimmee, Fla., and after he was appointed he moved to St. Augustine, took and occupied a house there, and he claims that his residence was there; but the case is entirely lacking of any evidence to show that after the district was changed and St. Augustine excluded from the northern district he ever acquired a residence in the district, either at Pensacola or Tallahassee, in the northern district as now existing.

Mr. GILLET of California. Mr. Speaker, I have listened with a great deal of interest to the arguments presented by the gentleman from Pennsylvania [Mr. Palmer] and by the gentleman from Alabama [Mr. Clayton]. I was a member of the subcommittee appointed by the Committee on the Judiciary to investigate the charges preferred in this House by resolution against Judge Charles Swayne, of the northern district of Florida. We went to Florida for the purpose of taking the testimony of witnesses, and after a number of days of careful consideration of the same we were unable to agree, not alone on the facts, but whether or not the charges made were of such a character as would warrant us in recommending impeachment proceedings. And it is on some of these charges that I desire briefly to address this House. I consider this one of the most serious occasions that can come before this honorable body. We are charged with a grave duty, and we ought to discharge it conscientiously, without any feelings of malice or prejudice, and weigh the matter with great candor and care in order that no injury shall be done to anyone. In this spirit I have examined the evidence in this case carefully, and until recently I have been unable to find, on the charges preferred by the resolution against Judge Swayne, any evidence or any facts that would warrant us in finding sufficient grounds on which to impeach him. The following resolution was offered here and passed in December last:

*Resolved*, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the official misconduct of Charles Swayne, judge of the United States district court for the northern district of Florida, and say whether said judge has held terms of his court as required by law; whether he has continuously and persistently absented himself from the said State, and whether his acts and omissions in his office of judge have been such as in any degree to deprive the people of that district of the benefits of the court therein to amount to a denial of justice; whether the said judge has been guilty of corrupt conduct in office, and whether his administration of his office has resulted in injury and wrong to litigants of his court.

Before proceeding to take testimony under this resolution, which appears to be quite general in its terms, the committee called upon Representative Lamar of Florida, the author of the resolution, to specify more particularly the grounds which were relied upon. In response to that request 13 specifications were preferred, and we started to take evidence on the same. It was not until a few days ago that there was injected into the case two distinct matters which were not referred to in the resolution or referred to in the specifications furnished by Mr. Lamar of Florida. But I undertake to say that, notwithstanding these matters were brought up at the last moment, they having been but recently brought to the attention of this House, it is proper to consider them, although not referred to in the resolution. To that matter I shall address myself later on.

Of these 13 specifications all were abandoned except three or four. The question of residence, the question of the rightful or wrongful act of finding O'Neal guilty of contempt, the question involving the Hoskins matter, and the finding of Belden and Davis guilty of contempt were considered by a majority of the Judiciary Committee sufficient to warrant a report in favor of impeachment. And, inasmuch as the gentleman from Pennsylvania [Mr. Palmer] and the gentleman from Alabama [Mr. Clayton] have only considered those grounds, I will only call your attention to them as I understand them.

First, take the question of residence. In 1885 Judge Swayne moved from Pennsylvania to the State of Florida, established a home there, and commenced the practice of the law. In 1889 or 1890 he was appointed district judge of the northern district of Florida. He moved his family to St. Augustine, that being a city within his district. He resided there continuously during several years until there arose a strong political feeling in that State, which finally resulted in the changing of the lines of the district and legislating him out of Jacksonville and St. Augustine. After this was done he was no longer residing in his district. What did he do? The question of residence now arises. Judge Swayne tells us that he knew the law required him to reside within his district. It is to his intention, coupled with his acts, that we are to look to see whether or not such residence was established. He says he went at once to Pensacola and registered at the Escambia Hotel as from that city. He spoke to the clerk of his court, asking him to try and find for him a suitable place in which to live. He also called upon Capt. Northrup, a prominent citizen of Pensacola, to try and find for him such a place. These gentlemen tell us that, acting at his suggestion, for three years they sought to find a suitable house in that city where Judge Swayne might make his home. During this time he was living in the Escambia Hotel or with Capt. Northrup. He had a room there which was known as "Judge Swayne's room." His family visited him there; and the law is that when a person holds an office during good behavior the presumption is that he resides within the district where he is to perform the duties of his office. So that this presumption attaches in Judge Swayne's case.

Not only did he, through his friends and himself, seek to hire or rent a place, but he went so far as to make arrangements to build a house that he might live in.



This continued for several years, until in 1890 he finally succeeded in renting the Simmons house. He moved his furniture there, he took his family there, he resided there, he made his home there; not all the time, but there was his abiding place. He had no home in Guyencourt, he had no home in Pennsylvania, he had no home any place in the world excepting in Pensacola, Fla. There is where his home was; he paid taxes on his furniture, or his wife did; he paid his insurance and he stayed there. It seems to me this must go to show the intent on his part to make that city his home, and that city is within his district.

Now, in 1893 his wife purchased a piece of property in Pensacola for a home. Shortly afterwards they moved into this place and made their home there. It has been said that he did not reside on this piece of property. Judge Swayne in his own statement says that he did. You have only to read his own statement to show that he did. It is sworn to by Marsh and others that he did reside in this home where his furniture was. Does not that go to make up a residence? The prosecution submitted to us names of a number of witnesses to prove that he lived in Guyencourt, Del. We called upon them to bring these witnesses here to be examined, and notwithstanding the assertion that was made, not a single witness from Delaware, where they try to make you believe he lived, was brought before the committee, and they sent men into that territory to investigate and find out, so as to swear to it.

Now, if he lived in Delaware, if he had his personal property in Delaware, if he had his home in Delaware, his neighbors and his friends must have known it. But, with all the efforts and industry of these gentlemen touching this matter, they were unable to bring before the committee a single witness who would testify that Judge Swayne resided or had a home in Delaware. They say that he did not pay taxes, that he did not vote in his district. These facts are not necessary in order to establish a residence, or to fix one's intent. Many men living in the South do not pay taxes and do not vote, although they were born and have their homes there. This is true also of the North. It is no evidence at all of what his intention was that he did not pay taxes or vote. When Judge Swayne went off to a place outside of his district to hold court, he registered "Charles Swayne, Pensacola, Fla."; and that was long before he knew that these impeachment proceedings were coming on; long before they were ever spoken of or mentioned.

Suppose that a gentleman here going into another city, myself, for instance, should register "Eureka, Cal.," as I always do without any thought of the future, would not that be strong evidence of where I considered my home to be? This is what Judge Swayne did. Now, in face of this fact, in face of the fact that he requested that his name be placed on the great register, in face of the fact that he had two men trying to find him a home, in face of the fact that he tried to build a home, in face of the fact that at last he did buy one—or his wife did—and that he moved his family into it long before these proceedings commenced, can we now say that he has violated the laws of his country, that he has not been a resident of his district, and that he ought to be impeached therefor?

Why, suppose the only question before this body was the question of residence, and you had the statement made by Judge Swayne

and witnesses in his behalf, would this House for one moment impeach him on that ground alone? Certainly not, because it is not sufficient.

Mr. PALMER. Will the gentleman allow me an interruption?

Mr. GILLETT of California. Certainly.

Mr. PALMER. Will the gentleman state how many days Judge Swayne was actually in the district for the first six years?

Mr. GILLETT of California. I do not know how many days he was in the district, and no member of the committee knows. It appears that he held court a certain number of days, but when a man is in a place he is not all the time holding court. I do not know how many days he was down there except when he was holding court. I say it makes no difference if he was not there more than 20 days; he might be somewhere discharging the duties of his office, and he would not lose his residence for that reason. When he was away trying cases in his circuit or visiting his aged mother in Guyencourt, was he getting a residence somewhere else? Was he establishing a home in some other country? No; the records show that he was in Florida and Alabama and in Texas, directed to go there and hold court, and when he was there he was discharging his duty to the best of his ability.

Mr. PALMER. Will the gentleman answer another question?

Mr. GILLETT of California. With pleasure.

Mr. PALMER. Does not the testimony show that the only time he was in the State of Florida was when his court was in session, and does not the testimony show that that was an average of 61 days a year?

Mr. GILLETT of California. I do not understand it that way. I understand that we took a number of days from the docket of the court when the court was called and found that he held court there on an average of 61 days a year. We found, also, that he was holding court in other States and districts on an average of about seven months a year, and this shows where he was at least a great part of the time.

Mr. PALMER. Mr. Speaker, may I ask the gentleman another question?

Mr. GILLETT of California. Yes; the gentleman can ask as many as he pleases.

Mr. PALMER. Does not the testimony show that he held court on an average, during the eight years from 1894 to 1903, 93 days a year, and where was he during the other 212 days?

Mr. GILLETT of California. The testimony shows that in 1895 he held court three months—April, May, November, December—outside of his district—not all the days during those months, but in those months in 1895. In 1896 the evidence shows that in January, February, March, April, June, November, December—eight months—he held court outside of his district, being sent there by judges superior to him. In 1897 the record shows that during the months of January, February, March, April, June, July—seven months—he held court in those other States, and the record also shows that in 1899, during the months of January, February, March, April, May, June, October, November—eight months—he held court in these other States, having been sent there by his superiors. In 1900 the evidence shows he held court during January, May, June, September, October, November—six months—out of his district; and in 1903, January and Feb-

ruary. I shall not contend that every day from the first of the month to the last he was sitting there holding court, but I do contend that during those months he was going back and forth to those courts and discharging his duties as a judge, and rendering his decisions; and I also say that because a judge was absent for that reason it is no argument that he had no residence in Florida, where he came from. Why, when he was directed to hold court, the order would go out that Judge Swayne, of the northern district of Florida, whose residence is at Pensacola, should go and hold court in these different districts, and yet the gentlemen are seeking to impeach this man—this judge—simply because he did not pay taxes, he did not vote, and was not in his district all of the time. He was there whenever his court business demanded that he should be there. There is no evidence that anybody suffered any injury by reason of the fact that he was not there. His docket was kept clean all the time, and he was sent out of his district to hold court because he, of all the other judges, was the least busy; because, on account of political troubles, a large part of his district had been cut off, and which ought to be restored. So much for the question of residence.

Mr. STEPHENS of Texas. Mr. Speaker, will the gentleman answer a question?

Mr. GILLET of California. Yes.

Mr. STEPHENS of Texas. I read in the Boston Globe, of December 12, yesterday, that Judge Swayne himself states that on an average of the last seven years he has held court only 60 days while in the district, and outside of the district 93 days. Is that approximately correct?

Mr. GILLET of California. I do not know.

Mr. STEPHENS of Texas. That comes from the judge himself, this statement in the Boston Globe.

Mr. GILLET of California. That may all be true, but can you impeach a man when you have cut down his district for political reasons, so that he has no business in it, and say that because he only held court 60 days a year that he did not reside there? If he had had business in his district, he would have remained there and discharged it. It is because he had no business there, because he could be sent abroad, that they chased him from Alabama away down through Texas nearly every month in the year, as shown by the record; and there is no complaint that he did not discharge his duties well. I believe that this charge of nonresidence ought not to be considered for one moment by this honorable body. I do not believe it has been established. A crime has been charged, and it is a crime, if this charge is true, which must be established beyond all reasonable doubt and to a moral certainty. You can not guess at it. It is a crime under the statute for a judge not to reside in his district, and it must be tried as crimes are tried, and I submit it is not proved beyond a reasonable doubt that Judge Swayne never had a residence in northern Florida. He always returned to his district when away, either on business or pleasure, because it was his home, the place where he was to discharge his official duties. It is true that he went to Guyencourt, Del., during the summer. His mother had a homestead there, where she and her husband had resided for many years. She is an old and feeble lady. And because, in the heat of the summer, when the rest of the judges of the South are taking their vacations, Judge Swayne went back to

his mother's place, in Guyencourt, Del., to the old homestead, to visit and be with her, to say that he lost his residence in Florida and gained one in Delaware is absurd. Who ever heard of his voting in Delaware?

Now, on the question of Belden and Davis, the majority of the committee recommend that Judge Swayne be impeached because of his wrongful, unlawful, and arbitrary conduct in imposing a judgment of contempt against those two lawyers in his court.

Let us look at the facts out of which this controversy arose. There was a case pending in Judge Swayne's court which was termed the "Florida McGuire case." The land involved in the case was described as a large tract of land running from trees, upstream, etc., the description being so indefinite that no surveyor could locate it. This case was pending in his court. During the summer his wife was seeking to buy some property of Thomas Watson & Co. Among this property, which she was seeking to purchase in her own right, was a block called "block 91," and deeds were made out in her favor and sent to Judge Swayne, at Guyencourt, where he then was. A quitclaim deed was offered. Now, Judge Swayne could have had no knowledge of the fact that this block 91 was within the tract. It was a block described like many other lots and blocks were described, and there was nothing in the pleadings that would indicate or call to his attention or raise the least suspicion that this particular block of land was involved in the suit; but as soon as inquiry was made, as soon as he learned it was involved in the land which he was trying the title to he told Thomas Watson & Co. he would not take it. His wife did buy the other two pieces of property, but this piece of property was absolutely excluded. This is all Judge Swayne could do. He never bought it. He never owned it. He never was in possession of it, and as soon as he found it was involved in litigation pending before his court that was the end of it. Now, along in the fall——

Mr. LITTLEFIELD. Right there, there is not a thing in the record that indicates that he even knew it was included in the tract he was negotiating for.

Mr. GILLET of California. Nothing at all; there was no evidence showing that fact. The description of the property would not tell it to him. He could not read the complaint and know it. Immediately after it came to his notice he advised the agents of the owner that he would not take it. Now, Judge Belden, Judge Davis, and Judge Paquet wrote to him asking him to recuse himself on the ground that he was an interested party. He very soon left for Pensacola, and he did not answer this letter; but the first day court was called and all interested parties were present in court Judge Swayne brought the matter up and made a statement in their presence concerning this matter. Now, I will give the testimony of Judge Blount, one of the leading lawyers of Florida, on this subject. This is the evidence.

Mr. HENRY of Texas. Will the gentleman permit an interruption? What date was it the judge made his first statement in reference to this land?

Mr. GILLET of California. This date was immediately upon his coming to Pensacola. Immediately on opening court in the presence of the attorneys for the plaintiff in that action, and I want to read from the testimony of Judge Blount, who was an attorney for the

defendant on that occasion and was present in the court and heard his statement.

Mr. HENRY of Texas. What was the day of the week and day of the month he made that statement? He made two statements, and I want to get that clearly before the House.

Mr. GILLET of California. On November the 5th, in open court.

TESTIMONY OF MR. BLOUNT.

The judge stated that he not purchased any such land; that his wife had, through him, negotiated for the purchase of a block of that tract, but when the deed was sent to close the trade he saw it was a quitclaim and he asked why a warranty deed had not been given. The reply by Watson & Co., Edgar's agents, was that the reason a warranty deed was not given was because this land was in controversy in this suit, and he did not care to give a warranty. Judge Swayne, learning this, caused the deed to be returned, and while there was not a formal application to recuse himself, he would try the case.

Now, I submit that is right. What is wrong about it? He did not own the land; he never did own the land; no member of his family owned it; he had no interest in it whatever. That case was there in his court and witnesses had been summoned there to try it, and, moreover, these lawyers asked him to recuse himself on the ground that he had an interest in it; and, having none, it was his duty to proceed to try the case. It being his duty to try the case, having no interest in it at all, he said that he would proceed with the criminal calendar called, and, as the criminal calendar would be finished that week, the civil cases would come up on the Monday following. The only civil case on the docket was the Florida McGuire case, and they asked on Saturday afternoon for a continuance until Thursday—that is, the attorneys for the plaintiff, Belden, Davis, and Paquet. This was resisted by Mr. Blount, attorney for the defendant. He said that his case had been tried about 11 times and the witnesses all resided within 30 minutes' walk of the courthouse; that he had his witnesses ready and he was ready to proceed to trial and that there was no occasion why the jury should be held over until Thursday, when the witnesses were all at hand. Judge Swayne said: "I will not continue the case until Thursday. This matter will go over until Monday morning, when I will try the case unless you can show me good reasons why it should be continued." That is right. He gave them an opportunity to present their reasons why it should not be tried that day. He said, "I will give you a chance to make the proper showing before the judge." That is the procedure in the courts of our land every day.

Judge Belden, Davis, and Paquet that evening went into a grocery store owned by one of the complainants. They talked the matter over. They conceived the idea of commencing a suit in the State court to eject Judge Swayne from this property, in which he had told them that he had no interest. The records of that county at that time show that the Pensacola Improvement Co. owned this land. It did not stand in his name, and if it was ever owned by anybody it was by Lydia Swayne, and not Judge Swayne. They did not sue Lydia Swayne, but the judge. They claimed that they had been damaged in the sum of \$1,000, and prayed for a judgment in that amount. They went to the office of the clerk about 8 o'clock at night and persuaded him to go and commence suit. They went to the office of the sheriff, but the sheriff demurred against serving the papers. They informed him that they must be served at all hazards that night.



Then they prepared a statement—wrote it themselves—and rushed to the printing office, and the next day it was proclaimed in big scare lines that suit had been commenced against Judge Swayne. Why did they commence the action so hurriedly? Why did not they wait until Monday? The question was asked them, and they said they were afraid that the judge would get out of the territory. Why should he leave before his docket was cleaned up? What reason had he to make his escape? Why this unseemly haste, in the dead hours of the night, if these attorneys were acting in good faith as officers of the court? The prosecution have tried to excuse Davis by saying that he was not a party to the suit pending before Judge Swayne. The evidence showed that he was. He joined in the letter requesting Judge Swayne to recuse himself. Mr. Belden said that he was one of the attorneys, and Judge Paquet said the same. They were all attorneys of Judge Swayne's court. They were representing clients who had business pending before that court. They ought to have had proper respect for it, instead of commencing a suit against the judge for the purpose of forcing him to recuse himself and calling in another judge to try the case. They commenced a suit that they never had any right to start and no just grounds upon which to base it. No papers were served upon the judge or any further action taken; and now it is seriously urged that the judge, after this reprehensible conduct on their part, after they claimed that he was trying or insisting upon trying a case in which he had an interest, and after maliciously publishing this fact to the world, that he had no right to bring these men before the court to answer for contempt.

These lawyers were officers of the court, and the laws of the United States provide that when an officer of the court is guilty of misbehavior he may be punished for contempt. A statement was made setting forth all of these facts, and these lawyers were cited to appear and show cause why they should not be punished for contempt. They never sought to purge the contempt. But they defended their position as right and tried to defy the court. After all the evidence had been heard and the facts had been brought to the court's knowledge, and they had been permitted to make their answer, the court found them guilty of contempt. I think it was quite right for him to do so, and not wrong and unlawful. It was within the pale of the law. And because he did this, this honorable body is asked to impeach him. Is not a judge of this land allowed to maintain the integrity of his court, to see that its orders are obeyed, and that no action is taken by its officers which brings the court into disrepute? Has he not a right to say that it is the duty of these officers to help to maintain the peace, good order, and dignity of the court and to see that they do so? If he did not do so, but permitted attorneys to disobey the court's orders, to make motions and commence actions that would have a tendency to bring discredit upon it, how long would it be before the court would cease to have the confidence of the people? How long would its decrees and judgments be respected and what officer could enforce them?

These attorney only had one object in view, and that was to force Judge Swayne, by bringing against him a fictitious suit, out of the case, and there can be no doubt that when an attorney brings unfounded proceedings against a judge for this purpose solely, as these

attorneys did, that he is guilty of contempt and should be punished therefor.

Judge Paquet fled, went back to New Orleans, and returned later on. He knew what had been done. He did not defy the judge upon his return. They say the judge is arbitrary and unjust in his judicial conduct. See what he did to Paquet, one of the instigators of the suit commenced against him, when he returned to Pensacola. Paquet filed the following statement:

Now comes Louis P. Paquet, respondent in the above-entitled matter, and says:

That upon full and mature consideration of his action and conduct in the matter referred to in the motion, made as the basis of the above-entitled proceedings, through excessive zeal in behalf of his clients, he did so act that this honorable court was justified in believing that the said actions were committed in contempt thereof and as showing disrespect therefor. That respondent regrets exceedingly the course taken by him in this matter, and now appears in court and requests that he be permitted to apologize for his behavior and file with the records in the above-entitled cause this paper.

LOUIS P. PAQUET, *Respondent*.

Did Judge Swayne, after this man came forward and made this frank apology, find him guilty of contempt? Did he show any undue arbitrary power? Did he show that he was a man unfit to sit as a judge? He excused him with a reprimand for what he did, and the proceedings were dismissed. There is no judge in the country who could have acted more honorably than that, and I have no doubt, had these other gentlemen followed the same course and presented the matter as Paquet did, that they, too, would have been excused in the same way.

There is another case, that of O'Neal, which the prosecution claims is a most serious offense, one which shows that this man is an unsafe judge to administer justice in the courts of this land.

What are the facts? A man by the name of Scarritt Moreno was forced into insolvency. After a trustee had been appointed by the court it came to his attention that a certain deed standing in Moreno's wife's name was property that belonged to the estate, and that a certain bank in Florida held a mortgage on the property with the full knowledge of the facts. An action was commenced against Mrs. Moreno, the bank, and other parties for the purpose of declaring the property to be that of the bankrupt and bringing the same into court to be distributed to the creditors. The trustee who brought the suit was acting as an officer of the court, he was acting under the authority of the court, and he was discharging the duties which the law imposed upon him when he commenced this action.

The action was commenced Saturday afternoon. Monday morning Mr. O'Neal, the president of the bank, coming by, saw Greenhut, the trustee, and a conversation commenced between them. They went inside of Greenhut's office, where the books were kept and where the business of the bankrupt estate was transacted. O'Neal says he went in there for the purpose of reproaching Greenhut for bringing this action. What took place inside nobody saw but themselves. Mr. Greenhut, after he was able to do so, filed an affidavit that this man came in there and abused him because of the suit that he had commenced, and during the controversy he drew a knife from his pocket and cut him through his ear, across his cheek to the corner of his mouth, and stabbed him in the body three times. When Mr. Greenhut was able to make affidavit to these facts he did so and

the matter was brought to the attention of Judge Swayne. Here was an influential citizen of Pensacola, a man who was president of a leading bank there, a man that the people should have respected and who must have held considerable power; but Judge Swayne investigated the matter. He called witnesses. The parties were sworn. He tried the matter and found just what Mr. O'Neal said that he did; that is, that he went there to reproach Greenhut for commencing this action, and because he did so and to punish him for so doing he stabbed him in the manner just stated.

Mr. PALMER. Will you not be good enough and fair enough to state that the reason why he reproached Greenhut was that the testimony showed that Mr. Greenhut was one of the directors of the bank of which O'Neal was president, and that he was present and knew that the bank loaned this money on this property; that it was a fair transaction and bona fide throughout; that the bank had sold the mortgage to others and had got the money for it? Will you not state that that was what O'Neal complained to Greenhut about, and that he brought this suit knowing these facts, and that he was a liar, a scoundrel, and a perjurer when he did so?

Mr. GILLET of California. That may be, but it is denied.

Mr. PALMER. It is not denied at all.

Mr. GILLET of California. Greenhut was acting as an officer of the court in bringing this suit. He had reason to bring that suit and O'Neal had no reason to come in there and assault him with a knife because he did bring it. He was not assaulting Mr. Greenhut as an individual alone, but he went in there and tried to commit murder upon an officer of the court who was discharging his duty and O'Neal had no excuse for so doing. Why, if a man can bring up matters of this kind and excuse his conduct, all any man has got to do when he is brought before the court is to bring up personalities and use them as a basis to excuse himself for interfering with the orders of the court and trying to kill its officers.

Mr. POWERS of Massachusetts. I would like to ask the gentleman a single question.

Mr. GILLET of California. Very well.

Mr. POWERS of Massachusetts. I notice there is printed in the majority report, on page 20, a statute regulating the punishment for contempt of court.

Mr. GILLET of California. Yes.

Mr. POWERS of Massachusetts. I would like to have the gentleman explain under what provision of that statute Judge Swayne was justified in imposing the sentence of contempt which he did impose upon O'Neal?

Mr. GILLET of California. I have not the report before me. O'Neal was interfering, as I understand it, with an officer of the court, and it was just as much contempt of court as if he had been in the presence of the court when he made the assault upon Greenhut. That is the reason why.

Mr. POWERS of Massachusetts. I would like to ask the gentleman if he understands that the suit brought by Greenhut was brought under any express order of the court?

Mr. GILLET of California. The suit was brought under his duty as an officer of the court, in order to get the assets that belonged to the bankrupt, so that the same might be distributed by the court to the

creditors. If he had no right to bring it under the law, he had no right to bring it at all.

Mr. POWERS of Massachusetts. He was bringing it under his general authority as trustee?

Mr. GILLET of California. Yes.

Mr. POWERS of Massachusetts. Suppose a lawyer who is an officer of the court brings a suit in his own name against another lawyer, and the other lawyer defends the suit, and a quarrel takes place between them and one assaults the other. Do you think that would be, under the statute to which I called your attention, a contempt which would be punishable by fine or imprisonment, one or the other?

Mr. GILLET of California. That is not a parallel case.

Mr. POWERS of Massachusetts. Why not?

Mr. GILLET of California. For this reason: One is an individual matter between the parties. Here was an officer bringing the suit as trustee, whose duty it was to see that the assets were brought into court for the benefit of the creditors. He brought the suit as an officer of the court. He represented the court, and any interference with him in the discharge of his official duty was a contempt of court from whence his authority came.

Mr. POWERS of Massachusetts. Are not all officers of the court entitled to the protection of the court under your theory?

Mr. GILLET of California. If the judge of a court appoints a lawyer to bring a suit and the judge had the right to make the order he would then be an officer of the court. Lawyers all stand as officers of the court before which they practice. In the case the gentleman put, the lawyer was not bringing the suit as an officer of the court; he was bringing it on his own account. Here the statute imposed upon this man the duty of bringing the suit. He looked, as he had the right, to the court for protection, and a murderous assault was made upon him; and because Judge Swayne had the courage to hold that this man, one of the foremost citizens, had committed a murderous assault upon an officer of his court and found him guilty of contempt you want to impeach him.

Mr. POWERS of Massachusetts. It appears in the evidence that this suit was a fraudulent suit and a groundless suit. Was he justified by this order to bring such a suit?

Mr. GILLET of California. It does not appear that that was so, but it makes no difference if it was. The suit was brought and was pending before that court. The court was not to inquire into the merits of the action or why the trustee started it. It was a proper suit on the records, and the officer of the court was entitled to protection of that court, which they justly gave him. This matter has been before the courts of the land. Judge Swayne's conduct was upheld. It is held that he had jurisdiction, and that he did inquire into it. It seems to me all the way through this matter there has been a great deal of bad blood, a great deal of ill feeling, and a considerable amount of persecution. This man O'Neal went before the Florida Legislature and employed lawyers to go there and spend large sums of money to lobby through a resolution upon which these proceedings are based. There has been a lot of bitter feeling from start to finish while Judge Swayne has been trying to discharge his duties, and I think he has discharged them to the best of his ability; that he did so fearlessly and conscientiously, and that his acts are justified by law.

Now, in relation to the Hoskins matter, I have this to say.

Mr. ALEXANDER. Before the gentleman enters upon that, will he not speak of the appeal which was made from the contempt decision?

Mr. LITTLEFIELD. And sustained by the court above.

Mr. GILLET of California. Well, Mr. Speaker, I might say that these matters went on. First, it went on writ of certiorari to the Supreme Court of the United States, and it was dismissed there. They came back and brought it up again on habeas corpus proceedings before the circuit judges. I have been trying to find what was said there in relation to it. Now, in answer to the gentleman's position, I desire to call the attention of the House to the case reported in 125 Federal Reporter, page 967, where O'Neal had this matter before that court after he had been found guilty of contempt. This is the language of the court:

The charge of contempt against the relator is based upon the fact that he unlawfully assaulted and resisted an officer of the district court in the execution of orders of the court and in the performance of the duties of his office. Under such orders, and in that respect, it would seem to be immaterial whether at the time of the resistance the court was actually in session with a judge present in the district, or whether the place of resistance was 40 or 400 feet from the actual place where the court was actually held, so long as it was not in the actual presence of the court nor so near thereto as to embarrass the administration of justice.

Under the bankruptcy act of 1889, section 2, the district courts of the United States sitting in bankruptcy are continuously open; and, under section 33, and others of the same act, a trustee in bankruptcy is an officer of the court. The question before the district court in the contempt proceedings was whether or not an assault upon an officer of the court—to wit, a trustee in bankruptcy—for an account of and in resistance of the performance of the duties of such trustee, had been committed by the relator, and if so, was it under the facts proven a contempt of the court whose officer the trustee was? Unquestionably the district court had jurisdiction summarily to try and determine these questions, and having such jurisdiction said court was fully authorized to hear and decide and adjudge upon the merits.

Now, Judge Swayne punished O'Neal for contempt, as he had the right to do, and to-day this House is asked to impeach him for doing an act which the courts of this country have said he had a lawful right and the jurisdiction to do. This is the position in which we are here, and it seems to me to be going a long way when we are requested to impeach a judge for a judgment rendered by him when it appears that it has been affirmed by a higher court.

Mr. LITTLEFIELD. That is the answer the court makes to the question of the gentleman from Massachusetts.

Mr. GILLET of California. And I suppose at the time this was being discussed the same question was asked there as to whether it was a suit well founded. Now, whether a suit is well founded or not can be no defense to a man who tries to justify his conduct in taking a knife and attacking an officer of the court for the purpose of deterring him from the faithful discharge of his duties as such officer. The question is, Did he make the assault? Was it made upon an officer of the court, and was his act intended to intimidate such officer, and would it be likely to do so. Now, if such was the fact, there is no judge or court in this land or world where justice is thoroughly administered who would not punish parties for contempt of court in so doing.

Coming now to the Hoskins case: An action or proceeding was commenced to force old man Hoskins into bankruptcy. A petition was filed by the creditors. It was not verified. It was demurred



to. The demurrer was sustained, because it was not verified, within a few days after the suit had been commenced. The petitioners asked permission for 10 days in which to prepare an amended petition. Judge Swayne ought to have granted the request and he did grant it. Any judge in the country would have done so. He gave them 10 days in which to amend their petition. Then, in the meantime, before the matter finally came up for hearing, a receiver was appointed, who took charge of the property of the bankrupt. Hoskins had been declared a bankrupt and the property was in the hands of the United States marshal and was being turned over to the receiver. One Richardson, an old man about 66 years of age, went to the store of Hoskins to take charge of the property. There he discovered a book which contained some of Hoskins's accounts. These accounts were necessary for the court to have, as they showed Hoskins's business dealings and business relations with people in that part of the country. When Mr. Richardson started to take this book away, young Hoskins, in the presence of his father, W. H. Hoskins, made an assault upon him, dragged him from his buggy, and with brass knuckles pounded him into insensibility. The old man was finally gathered up and put into his buggy and driven away and the books were taken from him. Now, then, that matter was before Judge Swayne when he refused to try the case. They wanted to go to trial without these books. They said: "We have witnesses here who will swear that there was nothing in these books at all, and that they belonged to young Hoskins and contained no accounts of the father." The others said that they believed they did contain accounts, because they had seen them. Old man Richardson was on his back because of the bruises that he had received and he could not attend, and he did not get up for some time. Judge Swayne said that he would not proceed to trial until a reasonable time had elapsed in which to procure those books. Mr. Hoskins was there during the trial and he could have brought them in if he wanted to. Now, as a matter of fact, those books never did come into court, and the case was continued until June. It was to be tried in June, and Judge Swayne came in June to try it, and they continued it until the fall, at which time it was settled without trial.

Mr. CRUMPACKER. It was continued by agreement.

Mr. GILLET of California. By agreement between the parties. It is alleged that Judge Swayne acted arbitrarily. It is alleged that there was a conspiracy to rob old man Hoskins. Now, I care nothing about what the lawyers agreed amongst themselves. I care not how dishonorable they may have been. That fact was not known to Judge Swayne, and the other day the gentleman from Pennsylvania [Mr. Palmer] in the committee room said that Judge Swayne knew nothing about it. I think there is a statement in this record that proves that. Now, how can Judge Swayne be tried for impeachment when he knew nothing of the conspiracy, if there was one; when he took no part in it, if there was any; when he did not encourage it, and knew nothing about it, and nothing was lost, because this property was turned back to Mr. Hoskins upon his filing a bond? It seems to me this is a most flimsy case upon which to impeach a man. Young Hoskins was then cited to show cause why he should not be found guilty of contempt for assaulting the receiver. I have here the state-

ment of the gentleman from Pennsylvania [Mr. Palmer], made in the committee room:

MR. PALMER. There is no allegation that Judge Swayne knew anything about this alleged conspiracy between Calhoun and Boone and Tunison at all. There is no testimony of that kind.

And still you want to impeach him for something that he did not know anything about. Is that the way justice is to be administered in this House? Is the greatest body in the world to stand and listen to charges of this kind? That is the report on file here. It is the report that has gone broadcast over this land. Let me call attention to something else that they claim is wrong and of which there is no evidence, and they have abandoned it. They said that Judge Swayne was so corrupt in the management of affairs of bankrupt matters pending before his court that the assets were all frittered away and there was nothing for creditors. We went there and found that 125 bankrupt cases had been commenced in his court. They brought before us the records of five only. We asked them to show us wherein a single wrongful act was done or a claim allowed that ought not to have been allowed, and they abandoned it all; but they published to the world and throughout the world that the bankrupt assets of the northern district of Florida have been robbed through the actions of Judge Swayne, and when we bring them down to it they can not put their finger on a single instance. Besides, the record kept by the Attorney General of this Nation shows that the bankrupt cases in his court are administered much more cheaply than they are in the average courts throughout the United States.

MR. PALMER. While the gentleman is on that, will he not please state that the record of the Attorney General's office also shows that there never was a dividend in any bankrupt case in Judge Swayne's court in the world?

MR. GILLET of California. That makes no difference. Suppose there are no assets there with which to pay a dividend; are you going to impeach a man on that account?

MR. PALMER. But is it not a remarkable circumstance that out of 125 cases there has not been a penny of dividend paid?

MR. MOON of Pennsylvania. Was not that explained by the fact that the exemption law of Florida allowed each man \$1,000 and 100 acres of land?

MR. GILLET of California. Now, we find because there have been no dividends paid from bankrupt estates pending in Judge Swayne's court that that is a sufficient reason for impeaching him. This is in line with many other things charged against Judge Swayne as grounds for impeachment, and if it does nothing more, it warns us to be careful in the judgment we pronounce. Now, as to the other things, I would speak of them briefly, and then I have finished.

In the case of the car that Judge Swayne used on his trip from Guyencourt to Jacksonville and on his trip to California, I have nothing to say in favor of that. I do not believe it is good policy for the courts of this land, even though the railroads are in their custody and receivers are appointed to take charge of them, to use the private property of that company, and I do not propose to justify that act at all. I think it should be criticized and frowned down upon so that judges hereafter will not do it, but it does not appear any harm was done. It does not appear any injury was inflicted. It does not appear

there was intended any corrupt purpose or that Judge Swayne was corrupted thereby or intended to be corrupted thereby, and it does not show any moral turpitude. I do not think that anybody could possibly vote to impeach him on that ground alone. Had he received the car with the corrupt intention of granting favors for that purpose in matters pending before his court, then he ought to be impeached, but there is no evidence of that kind. It was a private car, used by the company, and when it went over the roads of other companies it was drawn free of charge as a matter of courtesy as is the president's car when drawn over these particular roads.

Mr. RICHARDSON of Alabama. If I understand you in the matter of the car, Judge Swayne did use that car for the benefit of his family and his friends, and it was passed upon by him and the receiver allowed a credit for it. Do you not think that is an impeachable matter?

Mr. GILLETT of California. Credit for what?

Mr. RICHARDSON of Alabama. For the expenses of the car.

Mr. GILLETT of California. He said he bore his own expenses.

Mr. PALMER. Not from Guyencourt.

Mr. RICHARDSON of Alabama. I would like to be informed on that; I would like to know——

Mr. GILLETT of California. It may be and it may not be.

Mr. RICHARDSON of Alabama. Would not that be larceny?

Mr. GILLETT of California. We must take this case as we find it. We find, first, the receiver of this road of his own motion sent to Delaware a private car belonging to the road of which he was receiver and Judge Swayne and his family get in it and ride down to Jacksonville, but there is nothing shown that anything particular is spent on the part of the company—perhaps a little for provisions. But does an offense of that sort involve such turpitude as requiring this House to impeach him? It is not an act I stand for. It is something we ought to condemn, but it has not that gravity, it has not that misbehavior and offense for which we are authorized to impeach.

Mr. RICHARDSON of Alabama. Just one other question for information, nothing else in the world. What does the receiver's account show?

Mr. GILLETT of California. There is no evidence showing anything of this.

Mr. PAYNE. It was stated here this morning that the receiver accounted for the expenses of this trip and the judge passed upon it.

Mr. GILLETT of California. I do not know any evidence of that kind.

Mr. LITTLEFIELD. There is not a thing of that kind in the case.

Mr. PALMER. There is evidence in the testimony of Mr. Axtell, Judge Swayne's lawyer. Now, is it not a fact the expenses of that trip from Jacksonville to Guyencourt were paid by the railroad company? Did not they pay the conductor and the cook?

Mr. GILLETT of California. I did not know there was a conductor on that car.

Mr. PALMER. The conductor was a sworn witness, and if the gentleman had read the testimony he would have known it.

Mr. GILLETT of California. I was not here when the testimony was taken. This thing was brought on us in the dead hours of the night. We received the testimony on Thursday evening, and we were called

upon Friday morning to pass upon 230 pages, just like another time when the committee was forced to act without having an opportunity to read the evidence.

Mr. PALMER. You should have been able to read the case. The testimony of the conductor was that he got the car at Jacksonville by order of the receiver—a car provided at the expense of the road—that the car went to Guyencourt and laid over one day and took on Judge Swayne, his wife, and his wife's sister and husband, and went to Jacksonville at the expense of the company, and Judge Swayne also testified those expenses were allowed.

Mr. GILLET of California. Well, it may have been——

Mr. PALMER. If it was right for him to take two or three hundred dollars, it was right for him to take a thousand dollars.

Mr. GILLET of California. But the point I make is here: This is a matter that is of a trifling character—well, it is not trifling, but it is a matter of such character that does not warrant impeachment proceedings. While I would not say it was right and would say it was wrong, I do not believe it is of sufficient importance to warrant us to impeach him.

Mr. PALMER. About how much money ought a judge to take out of a bankrupt court before you would impeach him? If you can not for \$300, would you do so for \$3,000?

Mr. GILLET of California. There is no evidence that he took any money out.

Now, in reference to this question of expenses.

Mr. LACEY. If the gentleman will permit me a moment. I think that nearly all the House this morning understood the gentleman from Pennsylvania [Mr. Palmer] to make the charge that the receiver not only furnished the car, but also supplied the provisions.

Mr. PALMER. That is what I said, and I say it now.

Mr. LACEY. On page 595 of the record the statement is made that the only thing that was not furnished was a small quantity of liquid that was in the car.

Mr. PALMER. That is the trip to California. I was not talking about that trip. I was talking about the trip from Jacksonville to Guyencourt.

Mr. LACEY. He furnished all the provisions himself——

Mr. PALMER. That is the California trip.

Mr. LACEY. Except liquid provisions.

Mr. CRUMPACKER. Permit me to ask the gentleman from California, is there any evidence in this record showing Judge Swayne requested the receiver to send that special car up there for him at all? I read the evidence through carefully and it seemed to me that it was an act of courtesy and accommodation on the part of the receiver. There is absolutely no evidence showing that Judge Swayne requested the receiver to bring a car to Guyencourt at all.

Mr. GILLET of California. Here is the evidence on that point:

The only time I ever came to Florida in a private car was in the autumn of 1893, when, at the suggestion of the receiver of the Jacksonville, Tampa and Key West Railroad, Mr. Durkee, the car came to Guyencourt and took myself and family to St. Augustine.

It was at the suggestion of Receiver Durkee.

Mr. CRUMPACKER. So that there is absolutely no evidence showing that the judge requested it, or even knew in advance that the receiver was going to do it.

Mr. GILLETT of California. Let me refer to Mr. Axtell's testimony on page 512. Of course this evidence was rushed in here at the very last moment. It was held back until a few days before this occasion, and Members have not had a fair opportunity to get this evidence and examine it. But Mr. Axtell in his testimony says, "the car was passed without expenses to the receiver or to the railway property." Now, I think I have taken about all the time I care to take up in this matter, Mr. Speaker.

Mr. STEPHENS of Texas. I wish to state that I find the statement published in the Boston Globe was made by the reporter of that paper, and was not an interview of Judge Swayne. I wish to make that correction. The figures he gave were correct.

Mr. GILLETT of California. I never saw the Boston Globe or the reporter either, so I can not say.

Mr. LITTLEFIELD. The gentleman said that Judge Swayne had given an interview. It was simply written by the reporter of the Boston Globe, giving his conclusions, and not a statement of Judge Swayne.

Mr. STEPHENS of Texas. I understood he made the statement in an interview, but it appears the figures were made up by the reporter.

Mr. LITTLEFIELD. And not an interview at all.

Mr. GILLETT of California. I wish gentlemen would allow me to quote a couple of questions and answers on page 512 in relation to the sending of his car—that is, the private car—to Guyencourt, Del.

Q. There has been testimony here of the receiver's car being sent for Judge Swayne and his family to Delaware. Was that while Mr. Durkee was receiver?—A. Yes, sir.

Q. Was it within your knowledge at the time?—A. It was.

Q. Do you know at whose instance it was sent?—A. The receiver sent it at his own instance.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. GILLETT of California. I ask unanimous consent for 15 minutes longer.

Mr. CRUMPACKER. Mr. Speaker, I ask unanimous consent that the gentleman may be permitted to conclude his remarks.

The SPEAKER pro tempore. The gentleman from Indiana asks unanimous consent that the gentleman from California may be permitted to conclude his remarks. Is there objection?

There was no objection.

Mr. GILLETT of California. There is one more point that I want briefly to mention, and that is in relation to the last charge that is made, on which it is asked that Judge Swayne shall be impeached namely, the receiving of sums of money for expenses in excess of what his reasonable expenses were, and that upon his written certificate.

The testimony taken since Congress adjourned discloses the fact, which has not been referred to either in the resolution passed by the House on December 10, 1903, referring the matter of the impeachment of Judge Swayne to the Committee on the Judiciary, or in the specifications furnished the committee by the gentleman from Florida [Mr. Lamar], which commands attention.

Under an act of Congress approved June 30, 1896, district judges directed to hold court outside of their districts were entitled to receive sums not to exceed \$10 per day, to be paid on their written certificates, for reasonable expenses for travel and attendance upon court



outside of their districts. This has continued to be the law up to the present time.

On March 3, 1891, an act was passed providing that a justice or judge attending the circuit court of appeals "shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held his reasonable expenses for travel and attendance, not to exceed \$10 a day." It is charged that Judge Swayne, at stated times between May, 1895, and March, 1903, when holding court outside of his district, filed a certificate for his expenses at the rate of \$10 per day and collected the same when his reasonable expenses were less than \$10 per day. There is no evidence in the record showing what his reasonable expenses were, it only appearing what his hotel expenses were; but it is fair to presume that in most instances they were less than the amount above named.

This charge, unless explained away and excused by some justifying circumstances, is a serious one. If this money was collected by Judge Swayne with a wrongful intent, fully believing and knowing that he had no lawful right to the same and that its collection was unauthorized, then he can not be excused for so doing, while, on the other hand, if it was collected with the honest and well-founded belief that it was the intention of the law to allow him \$10 a day for expenses while absent from his district attending court, independent of the amount which he actually expended, and that this was the generally accepted construction of the law placed upon the statute by many of the district and circuit judges, of which fact he knew, and that they are, at least a large majority of them, so believing, filed their certificates for \$10 a day irrespective of their reasonable expenses, then this is a fact which ought to be taken into consideration.

Now, in this particular instance, while there may be some doubt as to the construction of the law, and my mind is not yet fully decided upon it, it appeared that Judge Swayne asked the committee to permit him to show what the usual practice was, to allow him to go into this matter, but that he was refused that right. As far as we know, there are no extenuating circumstances at all. He had no chance to put on witnesses to prove that fact. It seems to me that this is something worthy of consideration; something that we should think over carefully before we act.

If it is true that since 1891, when the law was changed, itemized statements have no longer been received or required and judges do not make them out; that this Government has recognized this practice, and with a full knowledge of these certificates for eight years have paid them, then it might be said that the Government itself construes this in the same way in which Judge Swayne himself might have construed it. It may be a judicial construction placed upon it, not only by the judges, but by the Treasury Department month in and month out allowing these bills for \$10 a day. This seems to me to be the only vital question for us to pass upon. This seems to me the only one worthy of consideration, and I ask and hope that before we pass upon it we will give it careful thought and careful consideration. Nobody wants to see any wrong done. We do not care to put ourselves in a position that will be unjust to others. We ought to maintain, though, the law of the land and do our duty, but we ought to do it fairly and honestly and fearlessly, and that, too,

after we have had ample time carefully to read the law and the evidence in relation to the facts before us.

Mr. Speaker, if I have any further time I reserve it for those in the minority.

Mr. JENKINS. Mr. Speaker, will my colleague yield for a question?

The SPEAKER pro tempore. Does the gentleman from California yield to the gentleman from Wisconsin?

Mr. GILLETT of California. Yes.

Mr. JENKINS. I understood you to criticize the committee for excluding evidence as to the practice of other judges.

Mr. GILLETT of California. No; I said that he asked to do it, and it was refused, and that he had no opportunity to do it.

Mr. JENKINS. Well, now, allow me to ask you if you did not sign this statement:

Evidence as to the alleged practice of other judges in this respect was offered and excluded, and, we think, properly.

Mr. GILLETT of California. Yes; I signed that.

Mr. JENKINS (reading):

It would have been competent for him, when a witness in his own behalf, to have stated why he made those certificates.

Mr. GILLETT of California. Yes.

Mr. JENKINS (reading):

As a witness, he answered and explained every other charge.

Mr. GILLETT of California. Yes.

Mr. JENKINS (reading):

This charge he made no effort, as a witness, to answer or explain. The inference from the record, on general principles, is that the charge is admitted to be true and that he has no answer or explanation thereto. Whether a satisfactory explanation can be made we do not say. We must take the record as it stands. Upon this record, unanswered and unexplained, we are of the opinion that in this particular an impeachable offense had been made out.

Mr. GILLETT of California. I said that. All I say is this: While that might be our individual opinion, when he asked that, he was not permitted to show it. That is what I say. It was excluded. We have before us the vote in relation to it.

Mr. JENKINS. One more question. What difference does it make as to what other judges were doing when the proof shows that in two separate cases he never expended for his reasonable expenses but one dollar and a quarter a day and then certified to the Government of the United States that he had expended \$10 per day? I want to ask my colleague this question: Was there any evidence from anybody showing that any other judge had been guilty of such corrupt practice?

Mr. GILLETT of California. No; there was not.

Mr. JENKINS. The only evidence that they brought before us was that the other judges had certified that the reasonable expenses were \$10 a day.

Mr. GILLETT of California. Will the gentleman show me any evidence that shows that Judge Swayne's expenses were only a dollar and a quarter a day?

Mr. JENKINS. But the gentleman from California has not answered my question.

Mr. GILLETT of California. I am answering your question by asking another.

Mr. JENKINS. What is the question?

Mr. GILLETT of California. I ask you if you know of any evidence in this case, fairly before us, that shows that Judge Swayne only expended one dollar and a quarter a day?

Mr. JENKINS. There is the evidence against him. There is his own statement. There is the evidence in three cases.

Mr. GILLETT of California. That does not prove that was his expenditure in all cases.

Mr. JENKINS. He had an opportunity to explain it. The point I am making is this: Was there any evidence offered to show that any other judge had certified that he had expended \$10 when the contrary was the fact?

Mr. GILLETT of California. Senator Higgins made a request like this, and I want to read it. Now, this took place at the hearing, and I ask to have it go in as a part of my statement. It is on page 433 of the hearing:

Q. The accounts of all the judges pass through your division of the United States Treasury Department?—A. Yes, sir.

Q. And as the chief of that division you have supervision, and it is your duty to inspect all of them?—A. Yes, sir.

Q. I observe here that the charge as certified by Judge Swayne for any particular number of days seems to be at the rate of \$10 a day?—A. Yes, sir.

Q. Is that usual?

Mr. PALMER. I do not think that is of any consequence. You need not answer that question. We are not trying any judge except Judge Swayne.

Mr. HIGGINS. The point that I make, if the committee pleases, is that the action of the several and respective judges of the courts of the United States are practically a judicial interpretation of the statute—as to what it means—and that if the judges are informed to furnish the certificates at the rate of \$10 a day it is their interpretation of its being proper and right under the statute.

Later on he says, on page 434:

Mr. HIGGINS. Before passing from that one consideration I would say a word as to the character of this inquiry and in respect to the tribunal. Of course the committee is gathering evidence for Congress. It is not itself a final court to pass upon the matter. And I submit that there might be a desire upon the part of many Members of Congress, and possibly a majority to have an answer to the question I put before, as to the course of the judges in the United States, and as to their passing upon the merits of this case, and in view of the latitude that has been allowed up to this time, that there is no reason why that should be excluded.

Mr. GILLETT of Massachusetts. Will the gentleman allow me a question?

Mr. GILLETT of California. Certainly.

Mr. GILLETT of Massachusetts. If we as individuals know that 75 per cent of the judges of the United States file just such statements as this—that their expenses are \$10 a day—would it not be a fair inference to conclude that they did not spend \$10 a day, but sent in the net sum of \$10 a day, and that Judge Swayne was sending in exactly the same kind of a return that 75 per cent of the judges of the United States courts did?

Mr. GILLETT of California. I think that would be a fair inference.

Mr. MANN. Will the gentleman from California yield to me for a question?

Mr. GILLETT of California. Certainly.

Mr. MANN. Will the gentleman tell us whether he is in favor of the resolution or not? [Laughter.]

Mr. GILLETT of California. As far as the matter stands on this record, I signed a report the other day that upon this matter I thought

an impeachable offense had been committed. But I am bringing this matter before the Members of Congress. I may vote differently than some other Member, I may vote differently from what you do, but I am discussing this state of facts as I understand them.

Mr. MANN. Well, the gentleman is a member of the Committee on the Judiciary and has given great attention to this matter, and I have great confidence in him. He has made a report one way and a speech the other. [Laughter.]

Mr. GILLET of California. No; I beg the gentleman's pardon, I am simply speaking of these circumstances and the inferences that might be drawn from them, what was attempting to be done.

Mr. MANN. Now, I beg the gentleman's pardon, he has made a report one way and a speech the other. I have great confidence in the gentleman's ability, and I would like to know, if the gentleman is willing to tell the House what his opinion is, whether this resolution should pass or not.

Mr. GILLET of California. When the roll is called, the gentleman from California will tell the gentleman from Illinois how he will vote.

Mr. MANN. Well, I will pay attention to the roll call and vote after the gentleman.

Mr. GILLET of California. If the gentleman does so, he will vote correctly, and I hope he will. [Laughter.]

Mr. HENRY of Texas. Mr. Speaker, the impeachment of a Federal judge is a most serious and solemn undertaking. Entertaining this view, I have cautiously and deliberately investigated the evidence and the law from the inauguration of the accusations against Judge Charles Swayne. Remembering that he has been an honored member of the Federal judiciary for many years, and that he is now frosted and gray with the weight of 68 winters on his head, is another cogent reason claiming my most deliberate action. The question will now recur upon the adoption of the resolution to impeach Judge Charles Swayne, which is stated as follows:

*Resolved*, That Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached for high misdemeanor.

The gentleman from California [Mr. Gillett] has made an argument opposing all the substantial charges against Charles Swayne by the majority of the Committee on the Judiciary, and he maintains that there is now only one impeachable accusation that can be sustained by the House. He maintains that the charges in reference to the accounts of Judge Swayne while holding court out of his district and in other States is the only charge left upon which a conviction can be had. If this case should be sent to the Senate without the substantial specifications upon which the majority of the Judiciary Committee deliberated for months, there would be an entire omission of the acts and misdeeds of the judge which clearly show his misbehavior and tyranny. Hence this House should vote in favor of the resolution impeaching him, carrying with it all the charges upon which the majority of the committee agree, in order that the Senate may take the evidence upon all such accusations and investigate every one of them and not base this case upon one isolated charge.

Mr. Speaker, it is not my purpose to discuss all the accusations embraced in the majority report. Only three propositions shall claim my attention during this discussion. The three points to which my argument shall be directed are: First, the nonresidence of

Judge Swayne in the district for which he was appointed; second, his imprisonment of the two attorneys, Simeon Belden and E. T. Davis, for a supposed contempt of his court; third, the matter of the alleged fraudulent accounts and certificates of Judge Swayne against the United States, made while holding court out of his district. None of the other accusations reported upon by the majority of the committee shall be waived by me.

The first specification reads:

*Specification 1.*—That the said Charles Swayne, judge of the United States court in and for the northern district of Florida, for 10 years, while he has been such judge, was a nonresident of the State of Florida and resided in the State of Delaware. That he never pretended to reside in Florida until May, 1903. That during said time of his nonresidence, by such nonresidence, he has caused great inconvenience, annoyance, injury, and expense to litigants in his court, not so much by failure to hold terms of court as by failing to be in reach for the disposition of admiralty and chancery matters and other matters arising between the terms of court needing disposition.

Mr. Speaker, for what offense may a Federal judge be impeached? During the 57 impeachment trials in Great Britain, and the 7 cases of impeachment before the Senate of the United States, there has been an overwhelming current of decision and opinion that a judge may be convicted and removed from office for misconduct and misbehavior, whether he has committed an indictable or criminal offense or not. The authorities are everywhere sustaining such proposition. Mr. Lawrence, a noted authority on this subject, states the law as follows:

Whatever crimes and misdemeanors were the subjects of impeachment in England prior to the adoption of our Constitution, and as understood by its framers, are therefore subjects of impeachment before the Senate of the United States, subject only to the limitations of the Constitution.

Again, the same author holds:

The authorities are abundant to show that the phrase "high crimes and misdemeanors," as used in the British and our Constitution, are not limited to crimes defined by statute or as recognized at common law.

Again, he most happily states the law relative to the impeachment of Federal judges in this wise:

The Constitution contains inherent evidence, therefore, that as to judges they should be impeachable when their behavior was not good, and the Senate are made the exclusive judges of what is bad behavior.

Mr. Curtis, in his History of the Constitution, lucidly states the true doctrine, as follows:

But a cause for removal from office may exist where no offense against positive law has been committed, as where the individual has from immorality or imbecility or maladministration become unfit to exercise the office.

Mr. Story, one of the strongest of American law writers, in his Commentaries on the Constitution, with convincing logic maintains the same doctrine. It is not amiss to quote from this high authority. He thus pertinently states the proposition:

And however much it may fall in with the political theories of certain statesmen and jurists to deny the existence of a common law belonging to and applicable to the Nation in ordinary cases, no one has as yet been bold enough to assert that the power of impeachment is limited to offenses positively defined in the statute book of the Union as impeachable high crimes and misdemeanors.

Mr. Rawle sustains Mr. Story in his statement of the law. In one brief sentence he recites the correct principle, as follows:



Neither in Congress nor in any State has any statute been proposed to define impeachable crimes; so uniform has been the opinion that none was necessary, even in those States, few in number, where common-law crimes do not exist.

So, Mr. Speaker, I maintain that it is not necessary for an impeachable act to be one which violates a positive law. There are various misdemeanors violating duties of office and official oath which shock the moral sense of men, and yet they may contravene no known or positive law of the land.

So I assert that if a Federal judge should persist in acting a buffoon or clown, unbecoming his dignity upon the bench, or should persistently refuse to hold the regular terms of his court, or should insist upon receiving the verdict of 6 men as that of a jury of 12, he would be guilty of misbehavior in office and impeachable, although he violates no law or positive criminal statute. Hence I say to this House that the overwhelming line of decision and precedent in impeachment trials in the United States and Great Britain has conclusively settled the proposition that a Federal judge or official may be impeached for misbehavior, although he has committed no criminal or indictable offense. In one of the latest works on the Constitution of the United States these propositions are steadfastly maintained and upheld by Mr. Roger Foster. He exhausts the subject and leaves the points stated above unanswerable and unanswered. Hence it is here asserted that the words "high crimes and misdemeanors," for which we are impeaching Judge Swayne, have the same import as the words "misconduct and maladministration" as the same are employed by the constitution of Great Britain in its description of impeachable offenses, and are only subject to the limitations of State and Federal constitutions.

Research of the thousands of pages in law books and legislative precedent clearly sustains my position. And again, it is undoubtedly true that the term "misdemeanor" covers every act of misbehavior in a Federal judge. Indeed, this very point was argued and decided in the impeachment trials of Judge Addison and Judge Chase. Recur to Article I, section 3, of the Constitution of the United States. It reads:

The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services compensation, which shall not be diminished during their continuance in office.

The express verbiage of the Constitution prescribes that the Federal judiciary shall hold their offices during good behavior, and when such good behavior ceases the judges shall forfeit their high and responsible offices. The judiciary should remain forever in this Republic as a city of refuge for the high and the low, for the strong and the weak, for the greatest and the humblest citizen of the land. Every patriot should yearn for the independence, glory, and justice of the judiciary. In the truest and best analysis of government it should be and remain for all time the palladium of American liberty. So long as the judiciary of this Republic is pure, untarnished by corruption, and free from tyranny it will be a potent factor to perpetuate our institutions and the best Government yet devised by men. So let this House hold all Federal judges to a strict accountability, requiring them to look to the written laws of this land as the north star of our destiny.

Keeping steadfastly in mind the gravity and solemnity of this occasion, permit me truthfully and faithfully to recite substantially the evidence on some of the salient points involved in this case. These facts we do know: That Judge Swayne was a resident of Florida in 1885; that shortly afterwards his office was burned in Sanford, Fla., and he removed to the county seat of the same county. We furthermore know that in 1889 he was appointed by the President of the United States to the position of district judge of the northern district of Florida, and that in 1890 he took the oath of office, after his appointment had been confirmed by the Senate of the United States, and duly qualified as judge of such district. We know that in 1895 Congress changed the lines of the northern district of Florida and left Judge Swayne residing in St. Augustine. It then became his duty to remove from St. Augustine into the northern district, for which he was appointed judge.

The gentleman from California [Mr. Gillett] contends that a judge holding office during good behavior is presumed to reside in the district for which he is appointed. Such proposition can not be sustained by any good authority as law. If so, it would not have been necessary or appropriate for Congress to pass the statute requiring residence in the district. Let me call attention of the gentlemen of the House to the specific language of the statute. I shall endeavor, by evidence, to clearly demonstrate that Judge Swayne has never been a resident of the present district for which he was appointed. The Federal statute reads:

A district judge shall be appointed for each district, except in the cases hereinafter provided. Every such judge shall reside in the district for which he is appointed, and for offending against this provision shall be guilty of a high misdemeanor.

He is required to reside in the district, and if he is not a bona fide resident of that district he is subject to impeachment and removal from office. In the beginning of this investigation, permit me to say, all my predilections and sympathies were in favor of Judge Swayne. My respect for the judiciary of my country is unbounded, and I was slow to come to the conclusion that this judge had been guilty of misconduct. But what has the unimpeached evidence disclosed! Appointed in 1890 to serve as Federal judge in the northern district of Florida, it is undeniably plain that he flagrantly and defiantly violated the above statutes down to the year 1903; and any gentleman may take the record, read it from beginning to end, and it will convince him that Judge Swayne has never been an inhabitant or resident of that district of Florida. The unvarying testimony is not controverted by a single witness that Judge Swayne would proceed to Florida from Delaware or some other State, hold his court about 30 days, and immediately upon adjournment "rise and fly" to Guyencourt, Del., or elsewhere.

Mr. WM. ALDEN SMITH. It is your contention that Judge Swayne never acquired any legal residence in this judicial district of Florida?

Mr. HENRY of Texas. It certainly is my contention that he never acquired a legal residence in this judicial district. When they took St. Augustine out of his district, instead of removing into the district, as the law required him to do, he said:

After consultation with my friends in Jacksonville and vicinity, they urged me not to remove my furniture nor my family, saying that the next Congress would be Republican and the district would be placed back in its usual form.

Mr. GILBERT. When was the boundary changed?

Mr. HENRY of Texas. In 1895 the boundary was changed, and Judge Swayne failed to remove from St. Augustine to Pensacola or any other city in the district.

Mr. RICHARDSON of Alabama. Mr. Speaker, will the gentleman allow me to ask a question?

Mr. HENRY of Texas. I yield for a while, but I have not much time at my disposal.

Mr. RICHARDSON of Alabama. Is it not the contention that he did not have any residence in the district?

Mr. HENRY of Texas. Undoubtedly. You may take this entire record, and reading it you will find that Judge Swayne never moved his family into the district; that he never became a resident of the district, and that he simply held court, completed the term, and hied himself away out of the district. Defiantly he refused to make his residence there. You can take the testimony of his best friends, of the chief witnesses, and they all testify that in every instance the only residence he ever acquired in the district was when he came to hold court, which lasted about 30 days. Then he went elsewhere after court had adjourned.

Take the testimony of one of his good friends, Judge A. C. Blount, from whom he purchased a house in 1903. Judge Blount was one of his witnesses and perhaps one of his most confidential friends except the lawyer and commissioner, Tunison. Judge Blount said:

When Judge Swayne purchased a house from me in 1903 he had a home in Guyencourt, Del. I learned this from him and others. I have been on pretty friendly terms with Judge Swayne. Have had conversations with him. I heard him talk about his place in Guyencourt. I don't know as he called it home or residence—he called it his place. He spoke about his horses, etc. I don't know whether he considered it his summer home or residence or what.

The testimony of J. E. Wolf, who has been district attorney and assistant United States district attorney in the State of Florida, gives convincing evidence against him. This is the substance of his statement:

I think that it was generally understood that Judge Swayne had a home in Guyencourt, Del., where he resided when he was not required to be in Pensacola or Tallahassee at terms of court. He boarded some with Capt. Northup in Pensacola. I think he rented a residence a few months. When terms of court opened in Pensacola Judge Swayne would come, and when they closed he would go away.

Substantially the same evidence is adduced by every witness called before the subcommittee, to wit, that Judge Swayne would come to Pensacola and hold his term of court and immediately leave for some other State and locality. It is true that he did board with Capt. Northup in Pensacola while he was actually holding court. It is a fact that in 1901 he moved his furniture into what is called the "Simmons house." His family moved into the house for a brief period of two or three months, when they returned to Delaware. He kept his furniture in such house for some time.

Although he was a judge of the northern district of Florida from 1894 to the present time, he has never undertaken to qualify himself to vote in that district. He knew it to be a fact that in order to vote he must go before the registrar of voters and take an oath to support the Constitution of the United States and the State of Florida. He offers evidence of a feeble effort to qualify himself to vote by saying that he requested some one, not connected with the registrar's office,

to see that his name was placed on the list of voters for the county in which Pensacola is situated. The whole record sustains the proposition that Judge Swayne has overridden the statute of the United States requiring his personal residence in the district for which he is to act as judge. This statute was passed to require actual, bona fide residence for the convenience of the inhabitants of the district and the litigants in the court.

As to what constitutes a legal residence I shall not extensively argue, but content myself with stating that the able and exhaustive argument just delivered by the distinguished gentleman from Alabama [Mr. Clayton] is most convincing and demonstrates beyond the peradventure of a doubt that Judge Swayne never acquired a legal residence in the northern district of Florida. In the broadest acceptance of the term, he was only a temporary sojourner, a transient, fleeting inhabitant of the district only while his court was actually occupied transacting the business therein. And on this charge he should be impeached and removed from office. Permit me to substantially recite the testimony of one or two other witnesses.

C. M. Coston, an attorney from Pensacola, states substantially:

I do not suppose that he held court more than a month at any time, say from two to five weeks. \* \* \* His residence here consisted only of the length of time it required for him to come here and hold court and go away.

Capt. W. H. Northup, of Pensacola, testified substantially as follows:

I have heard Judge Swayne speak of his home at Guyencourt.

George P. Wentworth, of Pensacola, testified substantially:

Judge Swayne boarded with Capt. Northup at the Escambia Hotel and sometimes stopped with the clerk. \* \* \* He occupied the old Simmons residence. His family came down there while court was being held and went back to his place at Guyencourt, Del. His residence in Pensacola was generally limited to holding terms of court here.

The next proposition I wish to discuss is the one of the alleged contempt in Judge Swayne's court by two attorneys, Simeon Belden and E. T. Davis. Mr. Belden is a former speaker of the house of representatives of the State of Louisiana and was attorney general of that State, and is a distinguished citizen over 70 years of age. He and Davis were arraigned before Judge Swayne on the charge of contempt solely because the judge imagined his dignity had been offended. He surrounded himself with a blaze of glory and assumed to himself more power and prerogatives than the satraps of old.

In all my researches of tradition and judicial history never have I found evidence so convincing of the tyranny and oppression of a petty, provincial judge, who sets himself up as a veritable dictator and autocrat. Mr. Speaker, we have had seven impeachment trials before the Senate of the United States. In 1803 Judge Pickering was removed from office because he had violated his oath of office and disregarded Federal statutes. He was found guilty of the four charges against him and lost his high office. The next Federal judge impeached by this body was in 1831. Judge Peck, a district judge in the State of Missouri, was arraigned and tried before the United States Senate. His imagined dignity had been offended by an Irish lawyer named Lawless. Lawless was counsel in a case instituted before the judge which had been decided and appealed to the Supreme Court of the United States. The judge had rendered his decision, and some

time after the judgment of his court had caused to be printed what he termed his opinion.

Lawless, in a mild and dignified communication in a St. Louis paper, criticized this opinion of the judge. For this published criticism of his opinion, Judge Peck had him brought before him on a charge of contempt, committed him to prison, and disbarred him for 18 months. Without a trial by jury, disregarding the constitutional rights of every citizen, this judge placed the stigma of a criminal upon this practicing attorney and denied him the right to pursue his profession for 18 months. In the trial before the United States Senate Mr. Buchanan, who was afterwards President of the United States, was one of the managers on the part of the House. In his argument before the Senate he most ably discussed the law of impeachments and delivered one of the strongest and most luminous legal arguments on that branch of our jurisprudence to be found in the books anywhere.

Mr. Buchanan predicted that it would be many years before another Federal judge would be impeached for thus punishing a citizen for contempt. In this respect his judgment was erroneous. While the impeachment failed in the Senate by a vote of 22 to 21, it was only a few brief years until Federal judges commenced to again harass, imprison, and maltreat citizens and attorneys in their courts. The example furnished by this case was not sufficient to deter judicial tyrants from trampling under their feet the rights of lawyers and citizens. That trial, however, had one salutary effect: It aroused sentiment against the encroachment of the Federal judiciary and inspired a determination to control and restrict them in their powers and jurisdiction. Upon the termination of this trial Congress passed an act setting upon the jurisdiction of Federal judges in contempt cases exact limits. Such has been the law of contempt from that day to this.

Judge Swayne well knew this act of 1831, and if not, he is grossly ignorant of one of the elementary rules that govern his court and should be removed for incompetency and lack of legal knowledge. In that year Congress made a statute on contempts so plain and specific that the waylaring man, though a fool, might thoroughly understand it. Still Judge Swayne, who has occupied his exalted position upon the Federal bench for 15 years, blandly pleads that he was ignorant of this statute that has been invoked so often in the United States. If he has not learned his power and jurisdiction within 15 years, to punish a citizen or a lawyer for contempt without the right of trial by jury, it is high time that this body should call him to task and send this case where appropriate punishment can be administered to him for his acts of injustice, misbehavior, and corrupt conduct.

Mr. Justice Field, in 1873, in delivering the opinion of the Supreme Court of the United States, construed the statute of 1831 and plainly reiterated the law of punishment for contempt before Federal courts. This decision must have been known to Judge Swayne; otherwise his lack of knowledge of the leading case on contempt is a sad commentary on his judicial ability. It is not amiss to quote a few lines from that opinion, as follows:

The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcements of the judgments, orders, and writs of the courts, and consequently to the due administration



of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject they became possessed of this power. But the power has been limited and defined by the act of Congress of March 2, 1831.

The act in terms applies to all courts; whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may perhaps be a matter of doubt; but that it applies to the circuit and district courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence or subsequent acts extending or limiting their jurisdiction. The act of 1831 is, therefore, to them the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the power of these courts in this respect to three classes of cases: First, where there has been misbehavior of a person in the presence of the courts or so near thereto as to obstruct the administration of justice; second, where there has been misbehavior of any officer of the courts in his official transactions; and, third, where there has been resistance or disobedience by any officer, party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the courts.

As thus seen, the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to force obedience to their lawful orders, judgments, and processes.

In the act of 1831 it is provided that a judge might fine or imprison for contempt of his court, but under no circumstances, however flagrantly his imagined dignity might be violated, can he fine and imprison. This penalty is provided for in the statute so clearly, and discussed by Mr. Justice Field in the case referred to, that if Judge Swayne was not aware of the statute and decision his career as a jurist for 15 years has been, indeed, barren and unsuccessful. But in the face of this statute and this decision he flagrantly violated their provisions by fining and committing to prison the two attorneys, Belden and Davis. On the 15th day of February, 1901, there had been filed in his court a case styled "Florida McGuire v. The Pensacola City Co."

After the filing of this suit in Judge Swayne's court a rumor became current and general that the judge had purchased block 91 of the land in controversy. The rumors became so definite that there was left no doubt in the minds of the public and counsel for the plaintiffs that Judge Swayne had purchased a part of the land involved. Whereupon counsel addressed to him a letter at Guyencourt, Del., asking him to recuse himself, because of the fact that he had contracted for or purchased block 91 of this land. Far be it from me to do him an injustice, but let any man intelligently read the record and he must come to the deliberate conclusion that in some way, either by himself or through his wife, he became interested in block 91 after the litigation had been instituted in his court.

The fact is patent from a perusal of the record. Judge Swayne declined to recuse himself, and said in his first statement after reaching Florida and opening court that a "relative" of his had purchased a part of the land in question, and that he had got hold of the deed and returned it to the vendor. In this statement he only referred to the "relative," not saying who the relative was. On the next day, or several days thereafter, in court he called up the counsel for the plaintiff in the McGuire case and said that the relative he had referred to yesterday or the day before was "his wife," and stated that she had paid for the land with funds inherited from the estate of her father in Delaware.

The evidence of his best friend, Judge W. A. Blount, perhaps the foremost lawyer of the State of Florida, is most persuasive and convincing against Judge Swayne. He and Judge Swayne were intimate

friends, and Judge Blount was the friend who moved that contempt proceedings be instituted against Belden and Davis. Belden and Davis had simply asked, as they had a right to do, after hearing of the current and well-founded rumors that Judge Swayne had purchased a part of the land in controversy, that he recuse himself and not try the case, because by virtue of his interest, or his wife's interest, in block 91 he was clearly disqualified as a judge. He declined to do so and grew furious and indignant. Let us deal with him justly.

Take the evidence of his good friend, Judge Blount, who defended his outraged dignity and originated the contempt proceedings. He tells us that when Judge Swayne opened court, or a day or so thereafter, counsel for Florida McGuire being in the room, Judge Swayne stated that he had received a letter from some of them asking him to recuse himself, because he had purchased a piece of the land which was a part of the land embraced in the Florida McGuire case; that he had not purchased any such land; that his wife had negotiated for the purchase of a part of this tract, through him, but when the deed was sent to close the trade he saw it was a quitclaim and he asked why a warranty had not been given. The reply by Watson & Co., Edgar's agents, was that the reason a warranty deed was not given was because the land was in controversy in this suit and he did not care to give a warranty. Judge Swayne, learning this, caused the deed to be returned, and that while there was not a formal application to recuse himself he would try the case.

Never once did Judge Swayne hint that he returned the deeds because the land was in litigation in his court, but because a warranty deed was not given and a quitclaim had been forwarded to him. If a warranty deed had been sent he would have retained it, apparently, although block 91, which he was purchasing, was in litigation in his court. This is the fair and legitimate inference from his statement, his acts, and the evidence of his good friend, Judge W. A. Blount. Belden and Davis had asked him to recuse himself on the trial of the McGuire case. He came from Guyencourt to open the November term of his court in 1901.

When the attorneys for the plaintiff in the case appeared in the court room, he called them up and stated that he would not disqualify himself in the case because a relative of his had purchased the land. He held himself not interested, although a relative was interested. He failed and refused to communicate to the counsel for the plaintiff who this relative was on the first day it was mentioned. However, he told them on the 11th of November that the relative was his wife. Why did he not make this announcement at the first and say that his wife had bargained for or purchased block 91, which was in litigation in his court? The merest tyro in the law knows, without the submission of a single argument, that the judge had no right to try the case and that he was clearly disqualified. There is an express statute in the State of Florida to the effect that anything which disqualifies a juror to sit in the case will also disqualify a judge to try it. Judge Swayne knew of this statute, if his ignorance of Federal statutes and decisions did not extend to State statutes and decisions in the State of Florida.

Mr. GILBERT. May I interrupt the gentleman?

The SPEAKER pro tempore. Does the gentleman yield to the gentleman from Kentucky?

Mr. HENRY of Texas. Just for a moment.

Mr. GILBERT. I want to know just how much time intervened from the time he disclosed the fact that it was a relative of his until it came out in the testimony that it was his wife?

Mr. HENRY of Texas. According to several of the witnesses it was from the 5th till the 11th of November, 1901. This relative had purchased the land. The so-called "relative" was his wife, and yet he held that he was qualified to try the case. Was it his "relative," or was it his "wife"? These are pertinent inquiries. No; it was neither.

The testimony shows, and it is in this record, that as a matter of fact he had bought upon credit, and was to give his note and mortgage, and the most significant fact of all is revealed in the letters which Mr. Hooten brought into court, showing that a blank note and mortgage were sent to Judge Swayne for him to fill in the amount of it. In other words, he was purchasing the land at his own price, without any price being named by the vendor. There is evidence to the effect that the judge purchased block 91 on credit, and that he was to give his notes and a mortgage on the land in payment for the same; but for some reason best known to himself the proceedings for the sale of the land were suddenly terminated, although letters, deeds, notes, and mortgages had been forwarded to and fro between him and the real-estate agents in Pensacola who were interested in the land in litigation in the McGuire case.

In spite of all that he would try the case as a "most just judge." Although he stated from the bench that a relative had purchased the land, and later that the relative was his wife, he had returned the deed to the real-estate agents not because of the litigation, but solely because it was a quitclaim and not a warranty deed. Still his imaginary dignity is offended when an upright attorney suggests to him his own disqualification, and such attorney is forthwith charged with contempt of his court. Contempt on the part of this attorney would be a mild term; indignation, injustice, and outrage would have been feelings more compatible with a true lawyer's ethics and sentiments. To this distinguished judge no injustice should be done, but I say to you that for this one act alone, as revealed and photographed in this record from beginning to end, his judicial ermine, which he has disgraced, should be stripped from his shoulders. He should be dragged from his high place of power, and an upright and honorable judge should fill his station.

Later on in the trial of this case, when it was subsequently refiled, after the first dismissal, he charged the jury to return a verdict in favor of the title to the land of which he had purchased a part. Such history and such acts on his part are peculiarly significant, and perhaps have a deeper meaning than that revealed on the surface of the record. Judge Swayne avers that he could not tell from the description of the land contained in the pleadings in the Florida McGuire case that block 91 was a part of it. Permit me to call to your notice that this lack of candor of the gentleman on trial here in this statement indicates a glaring lack of fairness on his part. He solemnly states before the subcommittee that the land as sued for by McGuire and others is described as follows in the petition:

Certain parcel or piece of land known as the Gabriel Rivas plat, containing 26 $\frac{1}{4}$  acres, more or less, in the eastern portion of the city of Pensacola.

Whereas the pleadings in that case reveal that his statement is not true and that the land is described in it as follows:

Certain parcel or piece of land known as "the Gabriel Rivas tract," containing 262½ acres, more or less, in the eastern portion of the city of Pensacola, Escambia County, State of Florida, mostly in section 8, township 2 south, range 29 west.

In a matter of detail like this propriety would require that in making his statements before the subcommittee of the Judiciary Committee that he should accurately state what the description was as contained in the original pleadings and not curtail or change the descriptions given in the papers of the case.

Mr. JAMES. What was the judgment he rendered in this case?

Mr. HENRY of Texas. I will tell you in a moment. Later on, upon the second institution of the suit for the same land, he gave a peremptory charge to the jury to return a verdict in favor of the title of the claimants against Florida McGuire and others. It appears that he endeavors to mislead the House by stating that he could not understand that it was a part of the Rivas tract, and gave the description in his statement as being bona fide, when it was not a correct description, as found in the original papers filed in the case. What next occurs? Belden and Davis, upon learning of his supposed interest in the land by reason of his purchase, ask him by letter and in person to recuse himself. He declined to do so. On Saturday evening at 5.30 o'clock he announced that on the following Monday he proposed to take up the McGuire case.

His court met at 10 o'clock. The criminal docket was being tried and about to be completed Saturday night. There were 50 or more witnesses in the McGuire case to be summoned for Monday morning. There would be no time to have process issued Monday morning and get the witnesses in court. The judge knew that and would try the case whether or no, and would not hold himself as being disqualified. Up to this time, Saturday evening at 5.30, E. T. Davis had not been of counsel in the McGuire case. When Judge Swayne made the announcement that he would try the case on Monday morning, Belden and Paquet met and agreed together to bring suit in the State court of Escambia County, Fla., against Judge Swayne for the purpose of trying his title to block 91 of the land in litigation.

They believed, and seemingly had a right to do so, that it was he who had purchased the land and not his wife. At least there was a well-grounded suspicion which caused the attorneys to most seriously question his statements. Saturday evening late Belden and Paquet associated E. T. Davis, an attorney of Florida, with them for the purpose of instituting a suit in the State court against Judge Swayne. These three gentlemen brought the suit in the State court against him for the possession of the land and for rents and mesne profits, amounting to something like a thousand dollars, which is the usual allegation in ejectment cases. On the following Monday morning Davis, who had not been an attorney in the McGuire case, appeared before Judge Swayne and asked for the dismissal of the McGuire case. The order of dismissal was granted by the judge and entered.

Judge Swayne says that he does not contend that counsel had no right to sue him, but complains of the manner in which the suit was brought. If there was any contempt in the institution of this suit it was a contempt of the State court and not of the Federal court, and Judge Swayne had no right or jurisdiction to punish in his court acts



committed in another court. He objects to the manner in which they approached the throne and sued the judge. They would not do as he would will it; they did not come with smiles and bouquets when they instituted the case against him in the State court. They simply charged that he was interested in the land, and they were exercising a constitutional right to sue an interested party, although he occupied the position of Federal judge.

When the McGuire case was dismissed Judge W. A. Blount, one of the most intimate friends of the judge, arose and said that Belden, Davis, and Paquet were guilty of contempt of the court in instituting a suit in the State court of Florida. He filed no affidavit, as the law requires, although the supposed contempt was committed out of the presence of the judge. Belden and Davis were arraigned before Judge Swayne on the charge of contempt and had a brief trial, wherein the judge denounced them and abused them from the bench, and said that their acts "created a stench in the nostrils of the people of Florida." He used epithets, his manner was not temperate, as befits a just judge on such an occasion; but he was acrimonious, violent, vindictive, and tyrannical. He transcended his legitimate powers, spat upon the statutes of the United States and the decisions of the Supreme Court on contempts, and entered a judgment fining, imprisoning, and disbarring two attorneys who had exercised a constitutional privilege.

Upon the suggestion of his *amicus curiæ*, he remitted the sentence disbarring them from the practice of their profession. He should have known that he could only fine or imprison, yet he imposed the extreme penalty of fine and imprisonment. He oppressed them maliciously and vindictively, according to every fair inference of this record. On habeas corpus Belden and Davis carried their cases before Judge Pardee at New Orleans. The court at New Orleans held that they could not question the jurisdiction of Judge Swayne, but inasmuch as he transcended his power it would hold that he could not fine and imprison them for contempt, and would give Belden and Davis the alternative of either paying the fine or going to prison. In pursuance of the judgment of Judge Pardee, Davis paid the fine and escaped imprisonment. Belden, although he was over 70 years of age, went to jail and served his sentence.

Still Judge Swayne, in his cooler moments, when his conscience should have been aroused and his better feeling as a judge revived, did not recall his unjust and vindictive judgment. He resented the action of the attorneys for asserting a legal right, and punished them strictly as a partisan and not as a judge. The proof is overwhelming that he oppressed them and harassed them as no Federal judge should ever be permitted to do.

There is another contempt case in this record which, it seems to me, makes an impeachable ground against Judge Swayne. He oppressed, punished, and perhaps sent to his death one O'Neal, who happened to fall a victim to his tyranny and wrath, because, forsooth, he had become involved in a difficulty with a trustee in bankruptcy in his court in a matter altogether foreign to the duties of such trustee as an officer of the court. In that case he again showed his malice and spleen and clearly transcended his prerogatives as a judge.

Let me briefly advert to the accounts of Judge Swayne while holding court out of his district. For many months he was detailed to hold court at points in Alabama, Texas, and perhaps other States. While



he was thus absent from home holding court, the law provides for his expenses as follows:

For reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts not to exceed ten dollars per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in settlement of his account with the United States.

This is the act of Congress of 1896. It is agreed that Judge Swayne made and signed on each and every occasion the certificates required by law before receiving the payment of \$10 per day for "reasonable expenses" for holding court out of his district. He never charged less than \$10 per day for such expenses, although in Waco, Tyler, and Dallas, Tex., his expenses ranged from \$1.25 to \$3 per day, and his traveling expenses from Pensacola could not possibly have exceeded \$50. His actual expenses were much less than \$10 per day, and in every instance he certified the amount of \$10 as being his reasonable expenses. Since 1896 he has held court many months outside of his district, and for so doing he has drawn from the Treasury over \$7,000, while his actual expenses have not exceeded \$3,000. In violation of the statute he has drawn from the Treasury more than \$4,000.

For making this false and fraudulent account he should be impeached and removed from office. In Waco, in 1895, he held court 30 days and drew from the Treasury \$300, although his actual expenses were much less than that amount. In Dallas, in 1896, he held court 40 days and drew from the Treasury \$400, although his actual expenses little exceeded \$100, if that. In Waco, in 1896, he held court 18 days and drew from the Treasury \$180, although his actual expenses were little more than \$1 per day. In Dallas, in 1896, he held court 36 days and drew from the Treasury \$360, while his reasonable and actual expenses were much less than that amount. In Waco he held court 28 days and drew from the Treasury \$280, although his reasonable and actual expenses were little more than \$1 per day.

The gentleman from Iowa [Mr. Lacey], in a colloquy to-day, suggested that this \$10 allowance was "compensation," but the law denominates it as being "for reasonable expenses." No law of Congress could constitutionally authorize a Federal judge to receive more pay than his legal salary. The Constitution itself expressly provides—

The judges, both of the Supreme and inferior courts \* \* \* shall at stated times receive for their services compensation, which shall not be diminished during their continuance in office.

At stated times they must receive their compensation, and it has been fixed by law as their legal salaries. The Constitution does not authorize them to draw this compensation as a salary under the pretext of reasonable expenses.

The Constitution does not permit a Federal judge to secure his salary under statutes providing for expense accounts, but authorizes that the salary shall be fixed by law. Under the law prior to 1896 judges were allowed money for actual expenses, but the act of 1896 was more stringent and requires that they incur only reasonable expenses. Under the old law the expenses might have been unreasonable; now they must be reasonable, and so certified.

Mr. Speaker, I have already detained the House beyond the limit of my time, and in a few moments I shall conclude my remarks.

After reading this testimony and hearing some of the witnesses, I assert that a perusal of the record will convince any unbiased, unprejudiced Member of this House that Judge Charles Swayne should be sent before the high court of impeachment.

Not upon the separate question of his fraudulent accounts, but upon all his wrongful acts as a judge in Florida, which demonstrate that he has been a petty tyrant there, openly defying the people and refusing to make his residence among them. He should be sent before the Senate, in order that they may be able to investigate his acts in the Belden and Davis contempt cases, in the O'Neal case, and in the Hoskins bankrupt case, where he sat on the bench and saw an old man who could not read or write, worth \$40,000, owing only \$10,000, plundered by a coterie of attorneys. And when the old man appealed to him for a trial, without a suggestion from anyone, he looked down from his place of power and said: "You had better get together in this case." He intended to imply by such suggestion: "Mr Hoskins, you pay over to these attorneys, Calhoun and Boone, \$1,000 each, as blood money, as a fee, and all the costs of bankruptcy proceedings, and then your property will be released."

All these combined acts reveal his perfidious record as a judge. They make plain that he must have known of the corrupt conduct of the attorneys going on under his very eyes. He should go before the Senate of the United States on all these propositions, and then if he had another or a better defense than he has given to the Judiciary committee, which has reported unanimously against him, if his escutcheon as a judge be unstained, he can clear himself before the Senate and before the American people. [Applause.]

Mr POWERS of Massachusetts. Mr Speaker, as the hour is late, it is my purpose to only speak briefly upon this resolution. It appears that the Judiciary Committee have, by a unanimous vote, reported that the respondent, Judge Swayne, has committed an impeachable offense. A majority of that committee have reported that he has, in their opinion, committed several impeachable offenses. For the purpose of the discussion which is now before the House, it seems to me that it is immaterial at the present time to enter at any great length into a discussion of whether all these charges constitute impeachable offenses. The real question which is before this House and upon which we will be called to vote is the question whether the respondent ought to be impeached. The question of whether he shall be impeached upon one or more articles is a question that must be settled at some future day. At the present time the question is whether the resolution of impeachment which has been reported by the majority of this committee shall be adopted. This House has no constitutional power to pass upon the question of the guilt or the innocence of the respondent. He is not on trial before us. We have no right to take from him the presumption of innocence which he enjoys under the law. All we have the right to do is to say whether there has been made out such probable cause of guilt as to entitle the American people to the right to have the case tried before the Senate of the United States. Even if we vote this resolution, we do not take from him the presumption of innocence. He is entitled to enjoy that, so far as any action of ours is concerned. We simply say by voting this resolution that the people are entitled to have this cause tried before the tribunal which under the Constitution is

ordained for the purpose of trying cases of this character. We say that and we say no more. There has been a somewhat lengthy discussion to-day as to whether certain offenses charged here are impeachable offenses. I assume, Mr Speaker, that we shall have the opportunity to discuss those questions later on. We shall have the opportunity to discuss the question whether the act of Judge Swayne in the Davis and Belden case constitutes an impeachable offense or not. We shall also have the opportunity later on to discuss the question whether the act of the respondent in the O'Neal case constitutes an impeachable offense or not.

Those are questions which can be considered at a future time better than now. I assume, however, that this discussion has taken the broad range that it has in order that this House might be fully acquainted with the evidence which was presented to the committee. Now, the evidence which came before the subcommittee came both from the complainant and the respondent. The evidence that was offered in behalf of the respondent was offered as a mere matter of courtesy and not as a matter of right. We are sitting here, as has already been said, as the grand inquest of the Nation. We are exercising the functions of a grand jury, nothing more. We can not pass at this time upon the question of the innocence or guilt of the respondent. All we can do is to ascertain whether or not this cause is worthy of trial before that body which, under the Constitution, has exclusive authority to hear it. In other words, the question is this: Has there been such a case made out; has there been cause shown sufficient to entitle the American people to the trial which the Constitution provides? More than that we are not called upon at the present time to determine. I am of the opinion it is the duty of this House, upon all the evidence, to vote the resolution of impeachment. I reached that conclusion with the greatest reluctance. For nearly 30 years I have enjoyed pleasant and harmonious relations with the members of the judiciary of my circuit and State. No American lawyer can review the long list of distinguished and eminent jurists which Massachusetts has given to the service of the State and the Nation without feeling an increasing pride in the profession to which he belongs. I think, Mr. Speaker, we all agree that our bias as lawyers—and the majority of this House are lawyers—is in favor of the judge against whom the accusation has been made. If the path of duty in this particular case was beset with doubt, I would gladly accord the benefit of the doubt to the respondent; but to my mind the path of duty is clear.

The 17 members of your Judiciary Committee who have studied this question, and studied it with care, have reached the conclusion that the respondent has, at least, committed one impeachable offense. I am aware that rumor has it that this prosecution was instigated by the political enemies of Judge Swayne. I can not believe that well founded. When I voted for the original report I was not advised as to which political party the respondent belonged. I did not then and I do not now consider that question of any importance. Whatever his political views may be they neither injure nor benefit his right of protection. All that I ask, all that Judge Swayne asks, is that if he is to have a trial it is to be a trial upon the evidence, and the evidence before the proper tribunal, and that is all that any American citizen insists upon. If we vote this resolution we simply

vote that this case shall go forward to trial. The question of the innocence or the guilt of Judge Swayne is to be determined by another tribunal over which we exercise no influence, and a tribunal that will examine every question and the evidence and reach a just and correct conclusion. I want to say, however, before I sit down just one word with reference to the exercise of that tremendous power known as the power of punishing for contempt. The resolution now before us is a resolution of a most serious and far-reaching character. We shall have an opportunity when we come to discuss the articles upon which the impeachment is to be based to take into consideration to what extent the people have given to the courts the power to protect their dignity and independence. We shall also have an opportunity to determine the rights of the people and the prerogatives of the courts. Now, it is claimed in this particular case that the power which was vested in the office of judge has been abused, and it is claimed that this respondent has exercised a power beyond that which the law conferred upon his office. To my mind the most serious charges against the respondent are those charges growing out of the O'Neal case and the Belden and Davis case.

I am aware, Mr. Speaker, that there is proof that the respondent, by false certifications, has taken from the Treasury of the United States several thousand dollars which properly did not belong to him. That if it amounts to anything it was the obtaining of money belonging to the people by false pretense. I know that there is evidence here that this respondent made use of property in the custody of his court for his personal convenience and enjoyment at the expense of the creditors of a bankrupt corporation. I think that those two propositions have been proven, but to my mind the most serious proposition is something that does not involve the property rights of the American people or the property rights of any railroad corporations. It strikes deeper than that. It involves the liberty of American citizens [applause], and I shall be surprised when this question is fought out, this evidence is examined, when the question of articles of impeachment comes up, if this House does not reach the conclusion that the most serious charge against the respondent is, first, the O'Neal case and, second, the Belden and Davis case. I say that because to my mind those are the two most serious charges against the respondent. I feel to-day, and I have felt all the time while this question was under discussion, that there was a misconception upon the part of many lawyers here as to what those cases were.

I do not propose at this time to undertake to discuss the evidence relating to those cases. I want, however, that this House should bear in mind that the power to imprison for contempt is, to say the least, a very dangerous one, never to be exercised except for the best of reasons, and then well within the authority conferred, for the protection of the dignity and the authority of the court. We have conferred that power in the belief that it never would be exercised except for the best of reasons and for the sole purpose of preserving the dignity and the authority of the courts. [Applause.] This question of imprisonment for contempt is one that has been under discussion for years in this country. What does it mean? It means that any Member of this House or any American citizen can be sent to prison by a member of the judiciary without the safeguard of being tried by a jury of his peers. Now, that is a tremendous power. It is

a dangerous power. In my State it never is exercised except for the best of reasons and for the sole purpose of preserving the independence and the dignity of the judiciary.

Now, I say to you, Mr. Speaker, that I believe this House will reach the conclusion that in the O'Neal case and in the case of Belden and Davis that it was exercised in disregard of law. That it was exercised by the judge, who, at the time, breathed forth malice toward his victims and violated a law that was plain and explicit. Before him in the Belden and Davis case was that statute which said he might fine or he might imprison, but he could not both fine and imprison. What did he do? He both fined and imprisoned; disbarred these members of the court for two years, thereby attempting to ruin their reputation and deprive them of the means of earning their living. Yet that statute which he violated was a statute plain and explicit. He knew that it had been construed by the United States Supreme Court—that clause as to whether he could both fine and imprison—yet, in violation of a plain and explicit reading of the statute, disregarding the opinion of the Supreme Court, he fined, imprisoned, and disbarred.

Mr. CRUMPACKER. Will the gentleman permit me to ask him a question?

Mr. POWERS of Massachusetts. Certainly.

Mr. CRUMPACKER. Both Belden and Davis were attorneys in the general practice of law, were they not?

Mr. POWERS of Massachusetts. I understand so—one in Florida and one in Louisiana.

Mr. CRUMPACKER. Did either of these attorneys call attention to the fact that the judge did not have the power both to fine and imprison at that time?

Mr. POWERS of Massachusetts. I do not know that they were in a position to call attention to that fact.

Mr. CRUMPACKER. Did any attorney?

Mr. POWERS of Massachusetts. I do not think they were permitted to do so. I do not think they even called the judge's attention to the fact that he did not have a right to disbar them. The very man who prosecuted them gave his opinion to the judge that he had gone much further than the law permitted him. "Why do you disbar these men? You ought not to do that; but you may fine and imprison them." So far as it appears these two lawyers had been told by the judge that they were a stench to the nostrils of the people; that they were ignorant. They stood, no doubt, dumb. They did not know what sentence might be imposed upon them. He was irritated, apparently full of malice at that time, and they did not ask him what he was going to do. They did not discuss the law.

Mr. LITTLEFIELD. Will the gentleman permit me to interrupt him?

Mr. POWERS of Massachusetts. Certainly.

Mr. LITTLEFIELD. The gentleman said that Judge Swayne said that he knew the law, that he could not fine and imprison, and that he knew the Supreme Court had construed it. Will the gentleman state where this appears in the record?

Mr. POWERS of Massachusetts. I think that is a fair presumption.

Mr. LITTLEFIELD. But you stated it as a fact. If it is, will you point me a place in the record where it appears?



Mr. POWERS of Massachusetts. There is a presumption that every man knows the law.

Mr. LITTLEFIELD. And that is the basis of your statement?

Mr. POWERS of Massachusetts. And I believe that a member of the judiciary must be presumed to know the law.

Mr. LITTLEFIELD. Is that all the foundation you have for the statement of fact that you have made, as going to prove the knowledge of the man?

Mr. POWERS of Massachusetts. I do not think I said that. I said he was bound to know.

Mr. LITTLEFIELD. You said that he did know.

Mr. POWERS of Massachusetts. If I stated he did not know I would charge him with ignorance, and I am not permitted to charge Judge Swayne with ignorance, because I know that he is a very capable judge, so far as legal attainments are concerned.

Mr. LITTLEFIELD. You charge him with ignorance of an opinion, and make an assertion of fact that is not sustained by the record.

Mr. POWERS of Massachusetts. I presume the court must have known of the existence of such a statute and must have known of the construction of that statute by the Supreme Court; certainly he was presumed to know. Every man is supposed to know what the law is, and he was presumed to know it when he was about to violate a statute which had been construed by the Supreme Court.

But I have already taken, perhaps, all the time I ought to take in this discussion.

I believe it to be the duty of this House, when these articles of impeachment come before it, to examine the evidence carefully, and to reach the conclusion as to all the articles upon which the respondent ought to be impeached. I had rather, so far as I am concerned, see the impeachment go forward upon the broad ground that he has abused his power, as I believe he has. Why, to my mind, we might forgive him if he had stolen five or six thousand dollars of the money belonging to the American people; but I am never ready to forgive any judge who has willfully taken from the American people the liberty which the Constitution guarantees. [Applause.] And I believe that we shall reach the conclusion that this is a case that ought to go forward for trial. That is the only question before us. If we believe there is probable cause, and that the people ought to have an opportunity to have this case tried, then it becomes our duty to send it forward for trial before the proper tribunal. [Applause.]

Mr. LITTLEFIELD. Mr. Speaker, I do not know that I quite agree with my distinguished friend as to the circumstances under which this House should vote to sustain the resolution pending before it. I do not think it is a question altogether of probable cause. I agree, however, that it is a matter that addresses itself to every man's conscience and judgment, and he should exercise them here independently, fairly, and honestly.

Now, so far as I am concerned, I can not vote for any specification or any charge unless, in my judgment, the Senate of the United States upon the record as it stands here before us, would be required in honor and in conscience to find the charge sustained. That may be too drastic a rule, but I can not, so far as I am concerned, evade the operation of that rule. It is not my purpose, Mr. Speaker, to enter upon a detailed discussion of the various propositions relied upon to

sustain this resolution. I do not agree that when the House comes to consider the questions which seem to be relied upon by my distinguished friend from Massachusetts [Mr. Powers] with such zeal, upon a fair analysis of the facts, the House will vote to sustain a specification based upon the suggestion of the question of contempt in either case. I am not going to discuss it in detail now. I do not agree with the majority of the committee in any of the items upon which they rely, except the last item. I do not agree that the gentlemen representing the majority of this committee have succeeded—mark you, have succeeded—in stating the rightful conclusions in relation to the other charges. Nor do I agree that they have succeeded in stating the facts as they are disclosed by this record in connection with those other charges. But I am not going into a discussion of this question now. Later on, if the House should adopt this resolution, the time will come when it is for the House to say, in the exercise of its intelligence and its judgment, what the specifications shall be.

I do not propose to discuss them for the further reason that it is my purpose, when the question is taken upon this resolution, to vote in favor of it, and I want to give the House, for a moment, the reason that I have for so doing. I do it solely upon the ground of the last specification—the using of a false certificate for the purpose of receiving money from the Treasury of the United States. And it is because I feel bound by the record as it stands before us to vote for this resolution for that reason that I do not consider it now essential to discuss the other reasons that have been relied upon in argument. If we reach that stage, as I understand the orderly method of procedure, if the House in the exercise of its wisdom adopts this resolution——

Mr. HENRY of Texas. Will the gentleman yield for a question?

Mr. LITTLEFIELD. Yes.

Mr. HENRY of Texas. I understand the gentleman to say that he is willing to submit the charge on the question of the fraudulent account.

Mr. LITTLEFIELD. I am coming right to that.

Mr. HENRY of Texas. Then, if the gentleman believes that Judge Swayne acted fraudulently in making those accounts, does he not think these other specifications would throw light on the intent of Judge Swayne in the account matter?

Mr. LITTLEFIELD. I do not think this House, in an impeachment proceeding, grave as it is, will undertake to present to the Senate of the United States and stand before this country upon the proposition that it is necessary to rely upon the atmosphere created by unsustained charges in order to sustain a charge that is valid in its character. That is the way I answer that. I do not believe in recognizing the validity of a proposition that is not sustained for the purpose of creating in the mind of any tribunal, either this one or the Senate of the United States, any element of prejudice or passion against the man charged. He is entitled to be judged when it reaches the Senate of the United States. If I understand the law of this land, which has been so affectingly referred to by my distinguished friend, who seems to labor under the impression that in some way or other the law has been abused by this man under some circumstances—if I understand the law he is entitled to be judged upon the specifications filed, and

the evidence under each specification is to be relied upon alone for the purpose of establishing that specification. I do not believe that an unfounded specification or the evidence relied upon to support it can be imported into the case in order to support a good specification. That is my view of that.

Mr. HENRY of Texas. Nor do I believe that an unfounded specification should be so presented.

Mr. LITTLEFIELD. That, I think, answers the gentleman's proposition. Of course this is a matter that every man must exercise his judgment upon. Personally, I will not vote for a moment to sustain any specification that I do not believe the Senate of the United States on its oath and its conscience on this record would not be bound to sustain as established beyond a reasonable doubt. That is my attitude in connection with that. I may be wrong, but I am obliged to be governed by it.

Now, I want to say just a word or two about this last specification. I think this House is entitled to the benefit of the work and the investigation of this committee and a fair statement from the committee of the reasons that have produced the conclusions which we have reached.

Upon the record in this case there is no question but that Judge Swayne, since 1896, has uniformly certified for his travel and attendance and his "reasonable expenses" \$10 per diem. There is no question upon the record in this case but that at least in several instances, and the latest in 1903, only last year, the only amount that he could have expended for his board and sustenance while attending court for 41 days is \$1.25 a day. There is no evidence in this case as to what Judge Swayne may have expended for travel going from his place of residence, or wherever he may have been, to Tyler, Tex., and return; but upon any hypothesis it could not have exceeded \$60 or \$75, so that there can be no question but that the issue is squarely raised upon this question of the false certificate, and it runs all along during that period.

Now, what is the law in relation to the question of false certificate? I am simply stating my belief, so far as I am concerned. I certainly hope that no man in this House will feel that I am urging him either to sustain or to refuse to sustain this resolution. I think it is beneath the dignity of any man on this committee to urge that proposition upon this House. Later on, if I have occasion in the discussion of the items which are involved, I will give the House my reasons, and then let every man say what he ought to do without any urging or any pressing from me, either one way or the other.

Now, what is the law in relation to these certificates? The statute in general terms expressly prohibits a judge from receiving anything by way of compensation in addition to his stipulated salary of \$5,000 a year. Up to 1896, after 1881, there appeared in the various appropriation bills an appropriation for the judicial department, an appropriation which provided for the payment of expenses of district judges when sent into other districts for the purpose of holding court under direction of the proper authority. The Comptroller of the Treasury held under that language in the appropriation bill that there was payable to the district judges under such circumstances simply their actual disbursement for expenses. They were required to certify them in detail. That is up to 1896.

In the appropriation bill of 1896 there appeared for the first time the language which I can quote in substance, near enough for the purpose of the point I want to make—the language under which the judges have since been paid. To my mind the only question for us to determine, or at least for me to determine, is, assuming the existence of the legislation, which simply authorizes the payment of the actual expenses up to 1896, How is it affected by this new legislation?

Mr. LACEY. Let me interrupt the gentleman right there.

Mr. LITTLEFIELD. If the gentleman will wait until I finish this sentence.

Mr. LACEY. I want to make a correction. I want to state that prior to 1896 the act of 1891 was passed, using the same identical language as to the court of appeals. It provided that the court of appeals should have expenses for travel, and was in exactly the same language that was passed in 1896 and had been in force for five years, and the circuit judges, sitting in the court of appeals, had been drawing \$10 a day in this circuit and all other circuits, and consequently, when this act was passed in 1896, we had five years of construction of the same identical language.

Mr. LITTLEFIELD. That may be so. I want to state frankly that the history of that statute never has been called to my attention. I do not question the gentleman's statement about it.

I am calling attention to this legislation. What the facts are as to that statute I do not know. I think perhaps I ought to say here in all fairness that I do think it is fair to assume that because judges have on file a certificate showing the payment of \$10 a day that they have not disbursed that sum of money. I do not wish to discuss facts that are not before the House and are not within my personal knowledge. I will say this: I have no doubt in the case of many judges that \$10 a day does not equal the sum they actually expend. So that it is quite obvious that upon the statement of \$10 per day, without giving further facts necessary to establish the proposition, it is not quite fair to assume, in discussing this in the presence of the House and before the country, that every judge who has on file a certificate showing expenses of \$10 per day has exceeded his actual disbursement, because there is no evidence of that fact, and no man can fairly assume it in the absence of the evidence.

I will resume the history of this legislation. The comptroller held that under the legislation prior to 1896 only actual disbursements could be paid. In 1896 there appeared in the appropriation bill for the first time the language under which these certificates in controversy have been paid, at least since 1896. The only question in my mind is this: Taking the legislation which by the construction of the comptroller simply allows the payment of actual expenses, what did the new legislation do? Did it enlarge, or did it narrow or restrict, the operation of the language of the previous legislation? As I understand, the appropriation of 1896 provided that the expenses should be "reasonable." So I am obliged to conclude that, although they might have been actual, if they were in excess of "reasonable expenses" they would not be authorized, because they could only certify to reasonable expenses. The language "expenses" alone is used in a previous appropriation, and in the appropriation for 1896 we find the language "travel and attendance." Expenses is a general term and would probably include

everything that could be called expenses. I find it limited in 1896 by travel and attendance, and then the further limitation of "not to exceed \$10 a day." All of which will be narrow and restrict the operation of the statute, minimizing the discretion that existed under the previous legislation.

Then the judge is authorized to certify in accordance with the provision of the statute, and his certificate is taken by the disbursing officers as imposing absolute verity, and therefore, I suppose, we have the right to assume and perhaps the right to demand, and I feel that we have, that the certificate should import actual verity. I can not help the conclusion, so far as I am concerned—though I may be wrong about this, and I do not undertake to force it upon the judgment or intelligence of any other Member of the House—that this statute of 1896 is narrower and more restricted in its construction than the legislation that existed prior to that time. Now let me read, for the information of the House, a section of the Revised Statutes of the United States which to my mind, although I somewhat regret it, but I can not help feeling, has more or less of a distinct bearing upon this whole subject as to the magnitude of the offense and its character.

SEC. 5438. Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other persons having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than \$1,000 nor more than \$5,000.

It will be noticed that it does not require the qualification of intent to defraud; simply actual knowledge of falsity. While I do not like to reach the conclusion, I am bound to say that I am driven to the conclusion that we can not quite hold, if the record discloses an offense under this section, that it is *de minimis non curat lex*; that it is to be ignored as a trifling matter. At least, that is the way I feel. Of course, every other man must exercise his own judgment. Now, what are the facts in the case with reference to this before the committee?—and I hope the House will realize and appreciate it. If I apprehend it correctly, it is the duty of this committee on this great subject to not only investigate thoroughly and give full and free



opportunity to be heard, but to report its conclusions, and give the House its reasons upon any of these questions involved. Now, the facts are that Judge Swayne was a witness before the subcommittee. He answered and explained every charge before that committee except this charge. We all know that the general rule is that when a man meets a complaint involving several items and fails to answer one item and answers the others the irresistible conclusion is that there is no answer to the one, and when he explains five and fails to explain the sixth the same inference necessarily follows upon the record. Now, it is true that Judge Swayne, through his counsel offered to show that the general practice in the United States upon the part of district and circuit judges was precisely like the practice in which he engaged. There is no dispute about the facts of the certificate. There is no dispute about the fact that only \$1.25 in some instances was paid. Now, that testimony, in my judgment, was rightly and properly excluded, because I do not believe that a controversy between other people could be inquired into affirmatively as a matter of original evidence by Judge Swayne by way of exculpation. I think it would be clearly *res inter alios acta*.

I do not know of any rule—of course I may be mistaken about this—that would authorize the introduction of that testimony as an affirmative proposition. Yet I have no doubt that Judge Swayne, if he had desired to do so, could have been heard before that subcommittee to give the reasons why he signed this certificate, and if those reasons involved the fact that, within his knowledge, there were other judges situated in like manner, who had uniformly given that same construction to this legislation, or if it involved the fact, as it might possibly, that he had signed that certificate on the suggestion of the marshal, for instance, that it was the custom and practice of the judges to sign in the same manner, I have no doubt but that evidence would have been admissible on his part for the purpose of showing, so far as he could show—I am not saying whether he could do it successfully or not—that he signed the certificate with an honest intent, without any intention of wrong, or that the construction that he placed upon it was one that he could fairly place upon it. But he was before the committee and failed to do so. It was open to the committee, although his counsel did not ask him that question, to so inquire; but I submit that the committee could hardly have done it with great propriety, because he was present—not only in person, but by counsel—controverting the greatest crime that could be alleged against him. It may be—I do not know what the fact is—that his counsel, for reasons of his own, did not desire the explanation made and, therefore, did not allow it to be made, and if that was the feeling of counsel it would have been an outrage upon the rights of Judge Swayne for a man on that committee to have insisted upon making him at that time, in this stage of these proceedings, disclose his reasons therefor. Now, I simply have this to say: I do not know what will appear when this case reaches the United States Senate, in case this House impeaches and places this man before that body, but I do not quite see how, on this record, as it stands here, the Senate of the United States could fail to sustain this charge, unanswered and unexplained.

Now, I go further, as the minority views indicate. I do not say that Judge Swayne may not be able at the proper time and in the proper place, in his judgment selected, to give a reason that may sat-

isfy the Senate of the United States that this charge can not be sustained. But your committee was confronted with this proposition. Here was the evidence and here was the statement of the respondent taken in his own behalf, and I must say, so far as I am concerned, I can not reach any other conclusion than the conclusion I have reached, and that is upon the record unanswered and unexplained. I am obliged to vote, and I shall vote when the time comes, to sustain this resolution. Later, if there is occasion and the House desires it and will give me a hearing, I will try to express in my weak and feeble way some views I have upon the other proposition, as to which I not only do not agree, but I absolutely disagree from beginning to end with my distinguished friends who have taken the other side of this controversy.

Mr. Palmer and Mr. Lamar of Florida rose.

The SPEAKER. For what purpose does the gentleman from Pennsylvania rise?

Mr. PALMER. I rose for the purpose of giving notice that I shall move the previous question after Mr. Lamar concludes his address.

Mr. LAMAR of Florida. Mr. Speaker, I shall detain the House but a very few moments, because I see that this debate has taken a more extended range than is necessary, considering the fact that the entire committee has recommended the resolution for the impeachment of Judge Swayne. It is not to be assumed that when the entire Judiciary Committee of this House submits a resolution to impeach a judge for corrupt conduct, after that committee has been in charge of making investigation of his conduct for a year, and having the entire evidence before them, that this House would pretend to vote against that resolution. I assume, therefore, that the resolution to impeach will pass—will be voted upon affirmatively. When it comes to the further question of specific charges against Judge Swayne, then, Mr. Speaker, I shall ask to prefer the charge and conclusively to prove it to every fair-minded man in this House that he is a tyrannical and corrupt judge.

I was glad to hear, Mr. Speaker, the gentleman from Massachusetts lay small stress, comparatively, upon his swindling the Federal Government, small stress compared with the offense of persecuting some of the citizens of Florida. And I was very glad, Mr. Speaker, that it came from a State outside of the section in which I live. I was glad to hear the voice also of the gentleman from Pennsylvania upon the same line, for I declare to you, Mr. Speaker, and I am acquainted with the general political history of my State, I am acquainted with the general reputation of Judge Swayne in my State, I am acquainted with the men who were sworn before that committee in that State and out of it, and I declare to you, as far as my word is worth anything with this House, that the highest and best testimony, of the highest and best men sworn in that case, fixes upon Judge Swayne the character not only of a corrupt judge, but, worse still, of a tyrannical judge. Judge Swayne has been denounced by the Legislature of the State of Florida twice for his corrupt conduct—in 1903 and in the year 1893, an intervening period of 10 years. This judge has been denounced by the State of Florida twice.

Now, Mr. Speaker, I congratulate this House and the country, and especially the people of the State of Florida, that we have got one ground upon which we can all stand to impeach Judge Swayne.

He has mulcted the Federal Government out of money that now ought to be in the Federal Treasury. I am glad that the people of Massachusetts and Maine and California can meet the people of my State upon the common ground that he is a violator of the law. But the charge of falsely certifying his accounts is a small and puerile charge compared with the charge I lay against him and for which the people of the State of Florida have denounced him, through their legislature, and that is that under the specious pretext of administering justice he has administered the Federal court in the northern district of Florida in the private interest of his own individual private hates and in the individual monetary interests of attorneys before his court; that there is a corrupt collusion between Judge Swayne and at least one attorney in his court to secure litigation to the one and revenge to the other that stamps Judge Swayne with infamy. That is the charge.

There is no indirection about that charge, so far as I am concerned, and I will undertake to prove it upon the floor of this House or forfeit its respect.

But, as I stated, I do not consider this the time to bring forth the proof; but in a general way I will undertake to say, Mr. Speaker, that Judge Swayne is under the corrupt domination of a corrupt man, and that Judge Swayne himself is corrupt, and that these two have conspired in the State of Florida to perpetrate the most villainous wrongs upon the people of that State, and all under the guise of legal discretion. The pretext is made that he might make a mistake in a matter—that he might err here and err there. Everybody concedes, Mr. Speaker, that a judge may sometimes honestly err. But who believes that an honest man of ordinary intelligence will or can err when the facts are so plain before him that a fool can not err? And that is the charge I lay against this corrupt judge.

I have nothing further to say at this time. When the charges and specifications come up I desire to submit my views upon the question pending. [Loud applause.]

Mr. PALMER. Before moving the previous question, I move to add to the resolution, after the word "high," the words "crimes and," and add the letter "s" to the word "misdemeanor"; so that it will read:

*Resolved*, That Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached of high crimes and misdemeanors.

Mr. PARKER. A point of order, Mr. Speaker.

The SPEAKER. The gentleman will send up his amendment.

The Clerk read as follows:

Amend by striking out all after the word "*Resolved*" and inserting "That Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, be impeached of high crimes and misdemeanors."

Mr. PARKER. I make the point of order that in my judgment the previous question is not to be directly ordered upon a question of high privilege of this sort.

The SPEAKER. The Chair sees no reason, even without the precedents, why the House can not, if the majority desires, by vote order the previous question; but the Chair is informed that the precedents are numerous upon this subject. The previous question is in order.

Mr. PALMER. I move the previous question on the passage of the resolution as amended.

The SPEAKER. The gentleman from Pennsylvania moves the previous question on the resolution and the amendment thereto.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. PARKER. Division.

The House divided; and there were—ayes 198, noes 61.

So the previous question was ordered.

The SPEAKER. The question is on agreeing to the amendment.

The amendment was agreed to.

The SPEAKER. The question is on agreeing to the resolution as amended.

Mr. HEPBURN. Mr. Speaker, I would like to have the resolution read as amended.

The SPEAKER. Without objection, the amendment will again be reported.

The Clerk read as follows:

[H. Res. 274.]

*Resolved*, That Charles Swayne, judge of the district court in and for the northern district of Florida, be impeached of high crimes and misdemeanors.

The SPEAKER. The question is on agreeing to the resolution.

The question was taken; and the resolution was agreed to.

On motion of Mr. Palmer, a motion to reconsider the vote by which the resolution was agreed to was laid on the table.

Mr. PALMER. I move the adoption of the following resolution, and send it up to the Clerk's desk to be read.

The Clerk read as follows:

[H. Res. 395.]

*Resolved*, That a committee of five be appointed to go to the Senate, and at the bar thereof, in the name of the House of Representatives and of all the people of the United States, to impeach Charles Swayne, judge of the district court of the United States for the northern district of Florida, of high crimes and misdemeanors in office, and to acquaint the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same; and that the committee do demand that the Senate take order for the appearance of said Charles Swayne to answer said impeachment.

The SPEAKER. The question is on agreeing to the resolution.

The resolution was agreed to.

Mr. PALMER. Mr. Speaker, I move the adoption of the following resolution, which I send to the Clerk's desk to be read.

The SPEAKER. The gentleman from Pennsylvania sends the following resolution to the Clerk's desk, which the Clerk will report.

The Clerk read as follows:

[H. Res. 396.]

*Resolved*, That a committee of seven be appointed to prepare and report articles of impeachment against Charles Swayne, judge of the district court of the United States for the northern district of Florida, with power to send for persons, papers, and records.

The SPEAKER. The question is on agreeing to the resolution.

Mr. LITTLEFIELD. Mr. Speaker, would the gentleman from Pennsylvania [Mr. Palmer] be kind enough to explain to the House what has been the practice heretofore in matters of this kind?

Mr. PALMER. In all cases, except the Belknap case, the practice has been to appoint a special committee to prepare the articles of

impeachment to be brought in and be voted upon by the House. In all cases I have found since the foundation of the Government down to date, except the Belknap case, that has been the course pursued. In that case the Judiciary Committee investigated the case and practically brought in the articles in their report, so that it was purely a formal matter to have the Judiciary Committee formulate the charges and specifications.

Mr. LITTLEFIELD. I notice that the resolution, may it please the Chair, proposes to clothe this committee with power to send for persons and papers. Is that simply following the form that has been heretofore used?

Mr. PALMER. That is simply following the form that has been adopted heretofore.

Mr. LITTLEFIELD. Does it seem to the gentleman from Pennsylvania that it would be proper to confer upon this new committee that authority and power?

Mr. PALMER. Well, it might be that the committee might need to send for somebody to get some light. I do not know.

Mr. LACEY. Would it be proper for that committee to send for those papers which the Judiciary Committee refused to allow to be examined as explanatory of this question of payment of per diem?

Mr. PALMER. I do not know that the committee declined to send for any papers, and I do not think it will do any harm to leave that in. It has always been inserted in similar resolutions.

Mr. LITTLEFIELD. Of course, the gentleman from Iowa [Mr. Lacey] understands that the record shows that that action was taken by the subcommittee. Now, I want to make this suggestion, if the Chair please.

As I understand the gentleman from Pennsylvania, up to the time of the Belknap trial, the practice has been to refer the matter to a special committee for the purpose of formulating the charges and specifications. I do not know that the course has been such as to establish a precedent that should not be departed from. At least, it was departed from in the Belknap case. Now, I want to make this practical suggestion, if the Speaker please. The Judiciary Committee have spent a very great deal of time in the investigation of this case, and I suggest whether the House would not be likely to get as good results from the Judiciary Committee, familiar as they are with the facts in this case, although their conclusion might not be unanimous, as from a new committee that would take, or at least ought to take, relatively, quite a considerable time for the purpose of preparing the charges, and whether the House would not be entitled to have the judgment of either the majority or the minority of the committee that have given time and investigation to this case, who have, of course, indicated more or less their opinion.

I do not wish to obscure that fact at all, but merely to suggest whether the House would not receive fully as good or better results by action of that kind. In order to raise that question, Mr. Speaker, I move to strike from the resolution the words "committee of seven" and to insert in place thereof "the Committee on the Judiciary."

The SPEAKER. The Clerk will report the proposed amendment.

The Clerk read as follows:

Strike out "a committee of seven is appointed" and insert the "Committee on the Judiciary be empowered."



Mr. PALMER. Mr. Speaker, it seems to me the best practical results can be obtained by appointing a select committee. It must be obvious to every Member of the House that the Judiciary Committee is hopelessly divided on this question as to what Judge Swayne should be impeached for. The House has decided to impeach him. Now, if a select committee is raised they will take up the testimony and report to the House articles which in their opinion can be sustained by the testimony, and then the House can intelligently pass on the subject. If this question goes to the Judiciary Committee, inevitably there will be two reports, about 11 men standing by one and the balance of the committee standing by the other. For that reason it seems to me it would be more rational and that we could get better results by the appointment of a select committee.

Mr. PAYNE. Does the gentleman from Pennsylvania think that there ought to be a committee that would be anything in the nature of a packed committee?

Mr. PALMER. No; I suppose the committee will be appointed by the Chair, and I do not imagine that anybody in this House would for a moment dream that the Speaker would appoint a packed committee. [Applause.]

Mr. PAYNE. Of course not; but I understood the gentleman from Pennsylvania to say that the Judiciary Committee was divided on this subject—upon the various articles of impeachment—and he wanted the motion to prevail so that there might be a unanimous report. It strikes me that the House is divided on the question upon what articles of impeachment this man should be tried upon before the Senate, and that the committee ought to represent both sides of this question and all branches of it. I have no doubt the Speaker would take that into consideration, but it seems to me that there would be no objection to referring it to the Judiciary Committee because, as the gentleman says, they represent different sides of the question. It seems to me all the more desirable to refer it to a committee that takes that view of it.

Mr. PALMER. Let us get some fresh blood into this committee. Let us get somebody that is not excited over it; somebody that can take a calm and dispassionate view of the whole subject and formulate the charges upon which this man is to be tried. The Judiciary Committee has got pretty hot over it. Mr. Speaker, I ask for a vote on the amendment to the resolution.

The SPEAKER. The question is on the amendment offered by the gentleman from Maine [Mr. Littlefield].

The question was taken; and on a division (demanded by Mr. Littlefield) there were 113 ayes and 140 noes.

So the amendment was rejected.

The SPEAKER. The question now is on agreeing to the resolution.

The question was taken, and the resolution was agreed to.

On motion of Mr. Palmer, a motion to reconsider the last vote was laid on the table.

HOUSE OF REPRESENTATIVES, *December 13, 1904.*

[Congressional Record, volume 39, part 1, page 249.]

## IMPEACHMENT COMMITTEE.

The Speaker announced as the committee to carry the impeachment before the Senate the following:

Mr. Palmer of Pennsylvania, Mr. Jenkins of Wisconsin, Mr. Gillette of California, Mr. Clayton of Alabama, and Mr. Smith of Kentucky.

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HOUSE OF REPRESENTATIVES, *December 14, 1904.*

[Congressional Record, volume 39, part 1, page 277.]

The Speaker announced the following gentlemen as members of the committee for the preparation of articles of impeachment against Judge Charles Swayne: Messrs. Palmer, Gillette of California, Parker, Littlefield, Powers of Massachusetts, Clayton, and De Armond.

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SENATE, *December 14, 1904.*

[Congressional Record, volume 39, part 1, page 257.]

A message from the House of Representatives, by Mr. W. J. Browning, its Chief Clerk, was delivered, as follows:

Mr. President, I am directed by the House of Representatives to communicate to the Senate the following resolution:

*Resolved*, That a committee of five be appointed to go to the Senate and, at the bar thereof, in the name of the House of Representatives and of all the people of the United States, to impeach Charles Swayne, judge of the district court of the United States for the northern district of Florida, of high crimes and misdemeanors in office, and to acquaint the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same, and that the committee do demand that the Senate take order for the appearance of said Charles Swayne to answer said impeachment.

The Speaker announced the appointment of Mr. Palmer of Pennsylvania, Mr. Jenkins of Wisconsin, Mr. Gillett of California, Mr. Clayton of Alabama, and Mr. Smith of Kentucky, members of said committee.

The Assistant Sergeant at Arms (B. W. Layton) announced the presence of the committee from the House of Representatives.

The PRESIDENT pro tempore. The Senate will receive the committee from the House of Representatives.

The committee from the House of Representatives was escorted by the Sergeant at Arms (D. M. Randsell) to the area in front of the Vice President's desk, and its chairman, Mr. Palmer, said:

Mr. President, in obedience to the order of the House of Representatives we appear before you, and in the name of the House of Representatives and of all the people of the United States of America we do impeach Charles Swayne, judge of the district court of the United States for the northern district of Florida, of high crimes and misdemeanors in office; and we do further inform the Senate that the House of Representatives will in due time exhibit articles of impeachment against him and make good the same. And in their name we demand that the Senate shall take order for the appearance of the said Charles Swayne to answer the said impeachment.

The PRESIDENT pro tempore. Mr. Chairman and gentlemen of the committee of the House of Representatives, the Chair begs to assure you that the Senate will take proper order in the premises, notice of which will be given to the House.

The committee of the House of Representatives thereupon retired from the Chamber.

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HOUSE OF REPRESENTATIVES, *December 14, 1904.*

[Congressional Record, volume 39, part 1, page 281.]

REPORT OF HOUSE IMPEACHMENT COMMITTEE.

The committee appointed to go to the Senate and at the bar thereof and, in the name of the House of Representatives and of all the people of the United States, to impeach Judge Charles Swayne, appeared at the bar of the House.

Mr. PALMER. Mr. Speaker, in obedience to the order of the House, we proceeded to the bar of the Senate, and, in the name of this body and of all the people of the United States, we impeached, as we were directed to do, Charles Swayne, judge of the district court of the United States for the northern district of Florida, of high crimes and misdemeanors in office, and we demanded that the Senate should take order to make him appear before that body to answer for the same; and announced that the House would soon present articles of impeachment and make them good, to which the response was: "Order shall be taken."

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SENATE, *December 14, 1904.*

[Congressional Record, volume 39, part 1, page 285.]

Mr. PLATT of Connecticut. Mr. President, I present a resolution, for which I ask immediate consideration.

The resolution was read, considered by unanimous consent, and agreed to, as follows:

*Resolved*, That the message of the House of Representatives relating to the impeachment of Charles Swayne be referred to a select committee to consist of five Senators to be appointed by the President pro tempore.

The President pro tempore appointed as the committee Messrs. Platt of Connecticut, Clark of Wyoming, Fairbanks, Bacon, and Pettus.

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SENATE, *December 15, 1904.*

[Congressional Record, volume 39, part 1, pages 295, 296.]

SENATE ORDERS ADOPTED.

Mr. PLATT of Connecticut. The special committee appointed to consider the message of the House relating to the impeachment of Charles Swayne submit the following report, and ask that the resolution or order may be adopted.

The order was read, considered by unanimous consent, and agreed to, as follows:

Whereas the House of Representatives, on the 14th day of December, 1904, by five of its Members (Mr. Palmer of Pennsylvania, Mr. Jenkins of Wisconsin, Mr. Gillette of California, Mr. Clayton of Alabama, and Mr. Smith of Kentucky), at the bar of the Senate impeached Charles Swayne, judge of the district court of the United States for the northern district of Florida, of high crimes and misdemeanors in office, and informed the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same; and likewise demanded that the Senate take order for the appearance of the said Charles Swayne to answer the said impeachment: Therefore,

*Ordered*, That the Senate will, according to its standing rule and orders in such cases provided, take proper order thereon (upon the presentation of the articles of impeachment), of which due notice shall be given to the House of Representatives.

*Ordered*, That the Secretary acquaint the House of Representatives herewith.

### HOUSE OF REPRESENTATIVES, *December 15, 1904.*

[Congressional Record, volume 39, part 1, page 334.]

#### SENATE ORDER REPORTED TO HOUSE.

The Speaker laid before the House the following resolution, which was ordered to lie on the table:

IN THE SENATE OF THE UNITED STATES,  
*December 15, 1904.*

Whereas the House of Representatives on the 14th day of December, 1904, by five of its Members, Mr. Palmer of Pennsylvania, Mr. Jenkins of Wisconsin, Mr. Gillette of California, Mr. Clayton of Alabama, and Mr. Smith of Kentucky, at the bar of the Senate impeached Charles Swayne, judge of the district court of the United States for the northern district of Florida, of high crimes and misdemeanors in office, and informed the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same; and likewise demanded that the Senate take order for the appearance of the said Charles Swayne to answer the said impeachment: Therefore,

*Ordered*, That the Senate will, according to its standing rules and orders in such cases provided, take proper order thereon (upon the presentation of the articles of impeachment), of which due notice shall be given to the House of Representatives.

*Ordered*, That the Secretary acquaint the House of Representatives herewith.

Attest:

CHARLES G. BENNETT, *Secretary.*

### HOUSE OF REPRESENTATIVES, *January 10, 1905.*

[Congressional Record, volume 39, part 1, pages 665-667.]

#### ARTICLES OF IMPEACHMENT REPORTED BY SPECIAL SUBCOMMITTEE.

Mr. PALMER. Mr. Speaker, I wish to make a privileged report. The committee appointed to prepare articles of impeachment against Charles Swayne, district judge of the northern district of Florida, reports that the evidence heretofore taken on the impeachment of Charles Swayne sustains 12 articles of impeachment, which are submitted for the consideration of the House, with the recommendation that they be adopted by the House and exhibited to the Senate.

Mr. Speaker, I ask unanimous consent that the articles be printed in the Record, so that all the Members of the House may have an opportunity to see them; and I give notice that on Thursday morning after the reading of the Journal I shall call up this matter for discussion, so that the House may have an opportunity to vote on the articles.

The SPEAKER. The gentleman from Pennsylvania, from the special committee touching the impeachment of Judge Swayne, reports

articles of impeachment, and asks unanimous consent that the reading thereof be dispensed with, and that the same be printed in the Record. Is there objection?

There was no objection.

Mr. PALMER. Mr. Speaker, I ask leave for the minority of the committee (Mr. Gillett of California representing the minority) to file the views of the minority, and that they also be printed in the Record.

Mr. WILLIAMS of Mississippi. Is this a report from the committee?

Mr. PALMER. The select committee appointed to prepare articles of impeachment of Judge Swayne.

The SPEAKER. It does not require leave to file the views of the minority. The gentleman from California [Mr. Gillett] presents the views of the minority, which will be printed and referred to the House Calendar.

Mr. PALMER. I ask that they be printed also in the Record, so that they may go along with the report.

The SPEAKER. If there be no objection, the minority views will also be printed in the Record.

There was no objection.

The report and the views of the minority are as follows:

The select committee appointed to prepare and report articles of impeachment against Charles Swayne, judge of the district court of the United States for the northern district of Florida, appointed December 13, 1904, submit the following report:

That the evidence heretofore taken in the matter of the impeachment of Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, sustains 12 articles of impeachment, which are submitted herewith, with the recommendation that they be adopted by the House and exhibited to the Senate.

ARTICLES EXHIBITED BY THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA, IN THE NAME OF THEMSELVES AND OF ALL THE PEOPLE OF THE UNITED STATES OF AMERICA, AGAINST CHARLES SWAYNE, A JUDGE OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF FLORIDA, IN MAINTENANCE AND SUPPORT OF THEIR IMPEACHMENT AGAINST HIM FOR HIGH CRIMES AND MISDEMEANOR IN OFFICE.

ARTICLE 1. That the said Charles Swayne, at Waco, in the State of Texas, on the 20th day of April, 1897, being then and there a United States district judge in and for the northern district of Florida, did then and there, as said judge, make and present to R. M. Love, then and there being the United States marshal in and for the northern district of Texas, a false claim against the Government of the United States in the sum of \$230, then and there knowing said claim to be false, and for the purpose of obtaining payment of said false claim, did then and there as said judge, make and use a certain false certificate then and there knowing said certificate to be false, said certificate being in the words and figures following:

"UNITED STATES OF AMERICA, *Northern District of Texas*, ss:

"I, Charles Swayne, district judge of the United States for the northern district of Florida, do hereby certify that I was directed to and held court at the city of Waco, in the northern district of Texas, 23 days, commencing on the 20th day of April, 1897; also, that the time engaged in holding said court, and in going to and returning from the same, was 23 days, and that my reasonable expenses for travel and attendance amounted to the sum of two hundred and thirty dollars and ——— cents, which sum is justly due me for such attendance and travel.

"CHAS. SWAYNE, *Judge*.

"WACO, *May 15, 1897*.

"Received of R. M. Love, United States marshal for the northern district of Texas, the sum of 230 dollars and no cents in full payment of the above account.

\$230.

"CHAS. SWAYNE."

when in truth and in fact, as the said Charles Swayne then and there well knew, there was then and there justly due the said Swayne from the Government of the United



States and from said United States marshal a far less sum, whereby he has been guilty of a high crime and misdemeanor in his said office.

ART. 2. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office as judge as aforesaid the said Charles Swayne was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed \$10 per diem, to be paid upon his certificate by the United States marshal for the district in which the court was held, and was forbidden by law to receive compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were \$10 per diem while holding court at Tyler, Tex., 24 days commencing December 3, 1900, and 7 days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of John Grant, the United States marshal for the eastern district of Texas, the sum of \$310, when the reasonable expenses incurred and paid by the said Charles Swayne for travel and attendance did not amount to the sum of \$10 per diem.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, the crime of obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

ART. 3. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office of judge as aforesaid was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed \$10 per diem, to be paid upon his certificate by the United States marshal of the district in which the court was held, and was forbidden by law to receive any compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel in going to and coming from and attendance were \$10 per diem while holding court at Tyler, Tex., 35 days from January 12, 1903, and 6 days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of A. J. Houston, the United States marshal for the eastern district of Texas, the sum of \$410, when the reasonable expenses of the said Charles Swayne incurred and paid by him during said period were much less than said sum.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

ART. 4. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office as judge as aforesaid heretofore, to wit, A. D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car, belonging to the Jacksonville, Tampa & Key West Railroad Co., for the purpose of transporting himself, his family, and friends from Guyencourt, in the State of Delaware, to Jacksonville, Fla., the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors.

The said car was supplied with provisions by the said receiver, which were consumed by said Swayne and his friends, and was provided with a conductor or porter at the cost and expense of said railroad company, and with transportation over connecting lines. The expenses of the trip were paid by the said receiver out of the funds of the said Jacksonville, Tampa & Key West Railroad Co., and the said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditure as a part of the necessary expenses of operating said road. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner, and under a claim of right, for the reason that the same was in the hands of a receiver appointed by him.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 5. That the said Charles Swayne was duly appointed, commissioned, and confirmed as judge of the United States in and for the northern district of Florida, and entered upon the duties of said office, and while in the exercise of his office of judge as aforesaid heretofore, to wit, A. D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa & Key West Railroad Co. for the purpose of transporting himself, his family, and friends from Jacksonville, Fla., to California, said railroad company being at the time in the possession of a receiver appointed by the said Charles Swayne, judge as aforesaid, on the petition of creditors.

The car was supplied with some provisions by the said receiver, which were consumed by the said Swayne and his friends, and it was provided with a porter at the cost and expense of the railroad company, and also with transportation over connecting lines. The wages of said porter and the cost of said provisions were paid by the said receiver out of the funds of the Jacksonville, Tampa & Key West Railroad Co., and the said Charles Swayne, acting as judge as aforesaid, allowed the credits claimed by the said receiver for and on account of the said expenditures as a part of the necessary expenses of operating the said railroad. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner under a claim of right, alleging that the same was in the hands of a receiver appointed by him and he therefore had a right to use the same.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of high misdemeanor in office.

ART. 6. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress approved the 23d of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine and contiguous territory were transferred to the southern district of Florida; whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida and to comply with the five hundred and fifty-first section of the Revised Statutes of the United States, which provides that—

“A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.”

Nevertheless the said Charles Swayne, judge as aforesaid, did not acquire a residence and did not, within the intent and meaning of said act, reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of October, A. D. 1900, a period of about six years.

Wherefore the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law and was and is guilty of a high misdemeanor in office.

ART. 7. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress of the United States approved the 23d day of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine, with the contiguous territory, was transferred to the southern district of Florida, whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida, as defined by said act of Congress, and to comply with section 551 of the Revised Statutes of the United States, which provides that—

“A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.”

Nevertheless the said Charles Swayne, judge as aforesaid, totally disregarding his duty as aforesaid, did not acquire a residence and, within the intent and meaning of said act, did not reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of January, A. D. 1903, a period of about nine years.

Wherefore the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

ART. 8. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge, as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 9. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 10. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 11. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a circuit judge of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 12. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office of judge heretofore, to wit, on the 9th day of December, A. D. 1902, at Pensacola, in the county of Escambia, in the State of Florida, did unlawfully and knowingly adjudge guilty of contempt and did commit to prison for the period of 60 days one W. C. O'Neal, for an alleged contempt of the district court of the United States for the northern district of Florida.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, as aforesaid, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

And the House of Representatives by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles of accusation or impeachment against the said Charles Swayne, judge of the United States court for the northern district of Florida, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same and every part thereof, and to all and every other article or accusation or impeachment which shall be exhibited by them as the case shall require, do demand that the said Charles Swayne may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

#### VIEWS OF MINORITY.

The House must establish the truth of these articles, by competent testimony, beyond reasonable doubt.

The only articles which, in our judgment, the record as it now stands would sustain are based upon the certificates of expenses. As to these it was claimed in the hearings that other judges have construed the law as it was construed by Judge Swayne, and evidence was offered to establish that claim and excluded.

We dissent from all the other articles, and especially as to those based upon the contempt proceedings in the Davis, Belden, and O'Neal cases. These cases clearly involved willful and marked contempt of court, and demanded exemplary and summary punishment from any self-respecting court.

The charge as to nonresidence is not supported by such evidence as warrants the adoption of articles in that regard.

The use of the private car, which is the proper subject of adverse criticism, taking into account the fact that there is no intimation or claim that any judicial act was influenced, or attempted to be influenced thereby, is not of such gravity as to justify impeachment proceedings therefor.

The car incident occurred more than 10 years ago, and no residence question has existed for more than four years. No statute of limitations can apply, but the great proceeding of impeachment is not to be used as to stale charges not affecting the moral character or the present fitness of the officer to perform his duty.

C. E. LITTLEFIELD.

RICHARD WAYNE PARKER.

I concur in all that is said in the foregoing "Views of the minority" except as to the certificates for expenses. At the hearing before the committee Judge Swayne offered to prove the custom and practice of the Federal judges in making certificates for their reasonable expenses for travel and attendance when holding court out of their district, the purpose being to show a judicial construction of the statute under which these expenses were allowed. This offer was denied by the committee and all inquiry upon this subject shut off.

Therefore, for this reason, the record is silent upon matters which, in my judgment, should have been submitted to the consideration of this House. The record is silent as to the custom and practice of other judges in this particular, as to the construction which they placed upon the statute, and as to the construction which the disbursing and auditing officers of the Government gave it.

The intent with which Judge Swayne made these certificates is of controlling importance, and all of the facts and circumstances surrounding the matter, the practice and customs of other judges, and the construction placed upon the statute by them and by the Government, if any, are and were proper subjects of inquiry. While the record is silent on these questions, for the reason above stated, still it appears from official records, some of which have been furnished to me by the Treasury Department, that a majority of the district and circuit judges in five circuits, selected at random, make out certificates for \$10 a day, and in two of these districts every judge made out such certificates.

I am inclined to believe that where a practice has been so general these judges acted in good faith with an honest belief that a fair construction of the statute gave them \$10 a day for an allowance for travel and attendance while attending court out of their district, and I also feel that this House would with great reluctance pass a resolution impeaching them all; and if not all, why one?

On this article my mind is not satisfied beyond a reasonable doubt that Judge Swayne in following a practice so well established by so many honorable men, committed a criminal offense for which he should either be prosecuted or impeached, and giving him the benefit of this doubt I can not consent to any impeachment on that ground.

J. N. GILLET.

## HOUSE OF REPRESENTATIVES, *January 12, 1905.*

[Congressional Record, volume 39, part 1, pages 754 to 764.]

### ARTICLES OF IMPEACHMENT DEBATED.

Mr. PALMER. Mr. Speaker, I call up the matter of the impeachment of Charles Swayne, and ask that the articles presented by the select committee appointed to formulate the articles be read by the Clerk.

The Clerk read as follows:

ARTICLES EXHIBITED BY THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA, IN THE NAME OF THEMSELVES AND OF ALL THE PEOPLE OF THE UNITED STATES OF AMERICA, AGAINST CHARLES SWAYNE, A JUDGE OF THE UNITED STATES, IN AND FOR THE NORTHERN DISTRICT OF FLORIDA, IN MAINTENANCE AND SUPPORT OF THEIR IMPEACHMENT AGAINST HIM FOR HIGH CRIMES AND MISDEMEANORS IN OFFICE.

ARTICLE 1. That the said Charles Swayne, at Waco, in the State of Texas, on the 20th day of April, 1897, being then and there a United States district judge in and for the northern district of Florida, did then and there, as said judge, make and present



to R. M. Love, then and there being the United States marshal in and for the northern district of Texas, a false claim against the Government of the United States in the sum of \$230, then and there knowing said claim to be false, and for the purpose of obtaining payment of said false claim, did then and there as said judge, make and use a certain false certificate, then and there knowing said certificate to be false, said certificate being in the words and figures following:

"UNITED STATES OF AMERICA, *Northern District of Texas, ss:*

"I, Charles Swayne, district judge of the United States for the northern district of Florida, do hereby certify that I was directed to and held court at the city of Waco, in the northern district of Texas, twenty-three days, commencing on the 20th day of April, 1897; also, that the time engaged in holding said court, and in going to and returning from the same, was twenty-three days, and that my reasonable expenses for travel and attendance amounted to the sum of two hundred and thirty dollars and — cents, which sum is justly due me for such attendance and travel.

"CHAS. SWAYNE, *Judge.*

"WACO, *May 15, 1897.*

"Received of R. M. Love, United States marshal for the northern district of Texas, the sum of 230 dollars and no cents, in full payment of the above account.

"\$230.

"CHAS. SWAYNE."

When in truth and in fact, as the said Charles Swayne then and there well knew, there was then and there justly due the said Swayne from the Government of the United States and from said United States marshal a far less sum, whereby he has been guilty of a high crime and misdemeanor in his said office.

ART. 2. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office as judge, as aforesaid, the said Charles Swayne was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed \$10 per diem, to be paid upon his certificate by the United States marshal for the district in which the court was held, and was forbidden by law to receive compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were \$10 per diem while holding court at Tyler, Tex., twenty-four days, commencing December 3, 1900, and seven days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of John Grant, the United States marshal for the eastern district of Texas, the sum of \$310, when the reasonable expenses incurred and paid by the said Charles Swayne for travel and attendance did not amount to the sum of \$10 per diem.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, the crime of obtaining money from the United States by false pretense and of a high misdemeanor in office.

ART. 3. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida entered upon the duties of his office, and while in the exercise of his office of judge as aforesaid was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed \$10 per diem, to be paid upon his certificate by the United States marshal of the district in which the court was held, and was forbidden by law to receive any compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel in going to and coming from and attendance were \$10 per diem while holding court at Tyler, Tex., thirty-five days from January 12, 1903, and six days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of A. J. Houston, the United States marshal for the eastern district of Texas, the sum of \$410, when the reasonable expenses of the said Charles Swayne incurred and paid by him during said period were much less than said sum.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

ART. 4. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida entered upon the duties of his office, and while in the exercise of his office of judge, as aforesaid, heretofore, to wit, A. D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa & Key West Railroad Co. for the purpose of transport-



ing himself, his family, and friends from Guyencourt, in the State of Delaware, to Jacksonville, Fla., the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors.

The said car was supplied with provisions by the said receiver, which were consumed by said Swayne and his friends, and was provided with a conductor or porter at the cost and expense of said railroad company, and with transportation over connecting lines. The expenses of the trip were paid by the said receiver out of the funds of the said Jacksonville, Tampa & Key West Railroad Co., and the said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditure as a part of the necessary expenses of operating said road. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner, and under a claim of right, for the reason that the same was in the hands of a receiver appointed by him.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 5. That the said Charles Swayne was duly appointed, commissioned, and confirmed as judge of the United States in and for the northern district of Florida, and entered upon the duties of said office, and while in the exercise of his office of judge, as aforesaid, heretofore, to wit, A. D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa & Key West Railroad Co. for the purpose of transporting himself, his family, and friends from Jacksonville, Fla., to California, said railroad company being at the time in the possession of a receiver appointed by the said Charles Swayne, judge as aforesaid, on the petition of creditors.

The car was supplied with some provisions by the said receiver, which were consumed by the said Swayne and his friends, and it was provided with a porter at the cost and expense of the railroad company and also with transportation over connecting lines. The wages of said porter and the cost of said provisions were paid by the said receiver out of the funds of the Jacksonville, Tampa & Key West Railroad Co., and the said Charles Swayne, acting as judge as aforesaid, allowed the credits claimed by the said receiver for and on account of the said expenditures as a part of the necessary expenses of operating the said railroad. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner under a claim of right, alleging that the same was in the hands of a receiver appointed by him and he, therefore, had a right to use the same.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of high misdemeanor in office.

ART. 6. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently by an act of Congress approved the 23d of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine and contiguous territory were transferred to the southern district of Florida; whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida and to comply with the five hundred and fifty-first section of the Revised Statutes of the United States, which provides that—

“A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.”

Nevertheless the said Charles Swayne, judge as aforesaid, did not acquire a residence, and did not, within the intent and meaning of said act, reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of October, A. D. 1900, a period of about six years.

Wherefore the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

ART. 7. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress of the United States approved the 23d day of July, A. D. 1894, the boundaries of the said northern district of Florida were changed

and the city of St. Augustine, with the contiguous territory, was transferred to the southern district of Florida, whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida, as defined by said act of Congress, and to comply with section 551 of the Revised Statutes of the United States, which provides that—

“A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

Nevertheless, the said Charles Swayne, judge as aforesaid, totally disregarding his duty as aforesaid, did not acquire a residence, and within the intent and meaning of said act did not reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of January, A. D. 1903, a period of about nine years.

Wherefore the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

ART. 8. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge, as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 9. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 10. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 11. That the said Charles Swayne having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a circuit judge of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 12. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of

Florida, entered upon the duties of his office, and while in the exercise of his office of judge, heretofore, to wit, on the 9th day of December, A. D. 1902, at Pensacola, in the county of Escambia, in the State of Florida, did unlawfully and knowingly adjudge guilty of contempt, and did commit to prison for the period of 60 days, one W. C. O'Neal, for an alleged contempt of the district court of the United States for the northern district of Florida.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge as aforesaid, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

And the House of Representatives by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles of accusation or impeachment against the said Charles Swayne, judge of the United States court for the northern district of Florida, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proofs to the same and every part thereof, and to all and every other article or accusation or impeachment which shall be exhibited by them as the case shall require, do demand that the said Charles Swayne may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

#### VIEWS OF MINORITY.

The House must establish the truth of these articles, by competent testimony, beyond reasonable doubt.

The only articles which, in our judgment, the record as it now stands would sustain are based upon the certificates of expenses. As to these it was claimed in the hearings that other judges have construed the law as it was construed by Judge Swayne, and evidence was offered to establish that claim and excluded.

We dissent from all the other articles, and especially as to those based upon the contempt proceedings in the Davis, Belden, and O'Neal cases. These cases clearly involved willful and marked contempt of court, and demanded exemplary and summary punishment from any self-respecting court.

The charge as to nonresidence is not supported by such evidence as warrants the adoption of articles in that regard.

The use of the private car, which is the proper subject of adverse criticism, taking into account the fact that there is no intimation or claim that any judicial act was influenced, or attempted to be influenced thereby, is not of such gravity as to justify impeachment proceedings therefor.

The car incident occurred more than 10 years ago, and no residence question has existed for more than 4 years. No statute of limitations can apply, but the great proceeding of impeachment is not to be used as to stale charges not affecting the moral character or the present fitness of the officer to perform his duty.

C. E. LITTLEFIELD.

RICHARD WAYNE PARKER.

I concur in all that is said in the foregoing "Views of the minority" except as to the certificates for expenses. At the hearing before the committee Judge Swayne offered to prove the custom and practice of the Federal judges in making certificates for their reasonable expenses for travel and attendance when holding court out of their district, the purpose being to show a judicial construction of the statute under which these expenses were allowed. This offer was denied by the committee and all inquiry upon this subject shut off.

Therefore for this reason the record is silent upon matters which, in my judgment, should have been submitted to the consideration of this House. The record is silent as to the custom and practice of other judges in this particular, as to the construction which they placed upon the statute, and as to the construction which the disbursing and auditing officers of the Government gave it.

The intent with which Judge Swayne made these certificates is of controlling importance, and all of the facts and circumstances surrounding the matter, the practice and customs of other judges, and the construction placed upon the statute by them and by the Government, if any, are and were proper subjects of inquiry. While the record is silent on all these questions, for the reason above stated, still it appears from official records, some of which have been furnished to me by the Treasury Department, that a majority of the district and circuit judges in five circuits, selected at random, make out certificates for \$10 a day, and in two of these districts every judge made out such certificates.

I am inclined to believe that where a practice has been so general these judges acted in good faith with an honest belief that a fair construction of the statute gave them \$10

a day for an allowance for travel and attendance while attending court out of their district, and I also feel that this House would with great reluctance pass a resolution impeaching them all; and if not all, why one?

On this article my mind is not satisfied beyond a reasonable doubt that Judge Swayne, in following a practice so well established by so many honorable men, committed a criminal offense for which he should either be prosecuted or impeached, and giving him the benefit of this doubt I can't consent to any impeachment on that ground.

J. N. GILLETT.

Mr. PALMER. Mr. Speaker, I notice an error in the sixth article—a clerical error. The figures 1904 should be 1894. I ask unanimous consent that that error be corrected in the Journal.

The SPEAKER. The gentleman asks unanimous consent for the correction of the clerical error. Is there objection? [After a pause.] The Chair hears none.

Mr. PALMER. Mr. Speaker, in a matter of this consequence it seems to me that an opportunity ought to be given for every gentleman who has views on this question to submit them to the House. I therefore ask unanimous consent that debate shall proceed, the time to be controlled one-half by the gentleman who represents the minority views, the gentleman from California [Mr. Gillett], and the other side by the chairman of the committee who formulated the articles of impeachment.

The SPEAKER. The gentleman from Pennsylvania asks unanimous consent that the time for debate be divided equally, one half to be controlled by himself and one-half by the gentleman from California [Mr. Gillett]. Is there objection? [After a pause.] The Chair hears none.

Mr. PALMER. Mr. Speaker, in obedience to the command of the House, your committee appeared at the bar of the Senate, and in the name of the House of Representatives and all the people of the United States impeached Charles Swayne, judge of the United States District Court in and for the Northern District of Florida, of high crimes and misdemeanors, and gave notice that in due time the House would exhibit articles of impeachment against him and make them good, and demanded on the part of the House that the Senate should take order in the premises. Answer was made that order would be taken. Subsequently a committee was appointed by the House to formulate the articles of impeachment. That committee has made report and the report has just been read by the Clerk at the desk. The time has now come that the House should perform the duty of preferring the articles of impeachment against Charles Swayne, as they gave notice to the Senate of the United States that they intended to do.

The first question for consideration is, For what reason and for what crimes and misdemeanors can a judge be impeached? The Constitution provides that all civil officers may be impeached for high crimes and misdemeanors.

In all the cases that have come before the Senate up to this time the point has been made that a judge can not be impeached except for an indictable offense; that the language of the Constitution is that a man may be impeached for high crimes and misdemeanors, and that anything short of an indictable offense is not and ought not to be impeachable. That defense never has prevailed, but the uniform ruling has been that a judge could be impeached for any misbehavior in office which evinced such turpitude, such a condition of



mind or body as rendered him unfit to perform the duties of his office; for any misbehavior in office; for the reason that he holds his office so long as he shall behave himself well; and in all the cases where impeachment has been moved by the House and tried in the Senate the articles have exhibited offenses which have not been indictable.

In the case of Judge Pickering, of New Hampshire, the articles set forth that he had released the bark *Eliza* to her owner, she having been seized under the laws against smuggling, without having taken the bond that the law required, and for having refused the United States the right of appeal; for having appeared on the bench in a drunken condition and for having used obscene language. For these offenses he was tried, convicted by the Senate, and removed from office. Of course, I need not state to any lawyer in this body that these offenses were not indictable.

Judge Chase was arraigned, impeached, and tried by the Senate upon the charge that he refused to allow counsel in a case to argue a question of law to the court which the court had already decided in a previous case. That offense was not indictable, but for it he was impeached and tried, but not convicted.

In the case of Judge Peck, he was impeached for having imprisoned an attorney at law for 24 hours and having disbarred him for 18 months for publishing a criticism in a newspaper upon a written opinion of the judge. He was not convicted, but the offense for which he was impeached was not indictable.

So that the precedents all show that a judge may be impeached for matters which are not the subject of indictment.

In this case the articles that have been formulated are grouped under four heads. I shall not consider them in the order in which they are placed in the articles, but in the order which seems to me to be most useful.

First, Judge Swayne is accused of having violated an act of Congress by not having taken up his residence in his district, as the law requires; secondly, having imprisoned and fined certain lawyers in his district and certain citizens of his district without authority of law upon an alleged contempt proceeding; third, that he used the property of a bankrupt corporation, which was in the possession of the court, for his own convenience and the convenience of his friends and family without making compensation to the owner, and under a claim that he had the right to do it because the property was in the hands of the court; and, lastly, that he obtained money from the United States by a false pretense, under the claim that he had expended \$10 a day for his necessary expenses of travel and attendance while holding court outside of his district when, in point of fact, his expenses had been far less.

These are the subjects of the charges. The committee formulating the charges were not agreed. Six of the members of the committee agreed to the charge upon the subject of the fees and one member disagreed. Four of the members of the committee agreed to all the charges, and three of the members of the committee disagreed to all the charges except that pertaining to the fees. I may say that there is no particular disagreement about the facts of this case, but the disagreement arises out of the inferences to be drawn from the facts—as, for example, in the matter of Judge Swayne's residence in the northern district of Florida. There is no dispute about the facts, but the



disagreement arises out of the inferences to be drawn from the facts. The law is that he shall reside in his district. The fact is that when he was appointed judge he took up his residence in his district as it was then constituted, in the year 1890. He lived in St. Augustine, Fla., he had a house there, his furniture was there, his family was there, and he had a legal residence there beyond any doubt.

In the year 1894 the Congress of the United States took away a portion of his district and added it to the southern district of Florida, and within that portion the city of St. Augustine was included. Judge Swayne did not remove his family and his furniture and his residence to the northern district of Florida, as the law commanded him to do. He never did remove there, and in point of fact he never removed there up to the year 1900. But he says that he had a legal residence in Florida, though not an actual residence. He states that he was informed by some of his friends that this act of Congress was a political measure and that it would be changed in the next session and that he might continue to maintain his residence at St. Augustine, and that therefore he did not move his family into the northern district. He says that he went to the hotel at Pensacola and there registered himself as "Charles Swayne, City," and announced his determination to take up his residence in Pensacola; that he asked some clerk in a bank, who is now dead, to put his name on the registration list; that afterwards, from that time on--1894 until the year 1900—he visited the northern district of Florida whenever his court was in session and whenever he had any legal business to transact; that he lived sometimes at the Escambia Hotel and sometimes at the house of one Capt. Northrup; that in Tallahassee he lived at some hotel there.

The extent of his bodily presence in the northern district of Florida during these years, from 1894 to 1900, was about 61 days in the year. He held court outside of his district about 93 days in the year. For 212 days in the year he lived with his family at Guyancourt, Del. Whenever he left the district, he left word that if anybody wanted him if anybody wished to transact any business with him, they would direct their correspondence to Guyancourt, Del. He stated to at least one person that his home was in Guyancourt, Del.

Now, I say there is no dispute about these facts. He claimed that he had a legal residence in Florida, and therefore he complied with the law. The committee is of the opinion that the act of Congress which required him to maintain a residence in Florida meant an actual residence; that the purpose of the act was to secure the bodily presence of the judge in his district, where the people of his district had business to do in his court could get at it; that it did not comply with the law for Judge Swayne to live a thousand miles away; that on his theory he might as well have said, "I mean to live in the northern district, but have gone to England or France," or any other foreign country, and then gone back and forth as the business in his district might require.

We are of the opinion that for six years, at any rate from 1894 to 1900, this judge did not reside in his district; that he had no legal residence there, and he certainly had no actual residence there. He had a number of excuses for not residing there. He says from time to time he endeavored to purchase a house. Well, endeavoring to purchase a house did not give him a residence. He says from time to

time he endeavored to buy land upon which to build a house, but that he could not satisfy himself as to the lot or the price. That certainly did not give him a residence. He says that he asked a man not connected with registration—some officer of the bank—to put him on the registry. That did not give him a residence. If Judge Swayne had been sued in Florida and the officer of the law had had a summons to serve on him he could not have found his last place of residence to serve the summons. He never voted there, he never paid the tax there, he never owned an inch of property there, and he does not to this day. Judge Swayne appeared before the committee at divers times. He was present at every hearing. His counsel cross-examined the witnesses. He himself testified; he made two arguments before the committee under the pretense of giving testimony, and in his first argument he never claimed that he was a resident of the northern district of Florida, and in the majority report the testimony on that subject is quoted, and the conclusion of the committee was reached on the testimony of Judge Swayne himself that he never lived in the northern district of Florida after 1900. I want no better witness on that subject than Charles Swayne, and I ask any lawyer in this body to read that testimony and tell me, as a matter of law, whether he had even a legal residence in the northern district of Florida.

In the year 1900 he says he rented the Simmons cottage, and that he moved into it with his furniture and family, and that he lived there from October until after the holidays. That then he went north on account of the sickness of his son. He never actually lived in the Simmons cottage after that time a day nor a minute. In his last argument before the committee he stated that he lived there from 1900 to 1903, when his wife purchased a house. On examination he could not give the day, nor the year, nor a time when he ever stepped into that house after the holidays of the year 1900. Of course, what he meant to say was that he had a legal residence there because he had moved his furniture into the house and had occupied it for the space of three months.

There are two articles, one charging him with having failed to reside in the northern district of Florida from 1900 to 1903, a period of three years, and the other from 1894 to 1900, a period of six years. We think both articles can be sustained, but whether both can be sustained or not, the question is whether either one of them ought to be made a subject of impeachment.

It is stated that Judge Swayne ought not to be impeached for this offense, because it happened so long ago, because so many years have gone by from 1894 to 1900 and no impeachment proceedings have been commenced against him. I beg Members of this House to remember that judges are not impeached for nonresidence or for any other cause until the patience of the people is worn out. It is not for one offense nor for two offenses that the people engage upon the task of impeaching a judge. It is long, it is tedious, it is uncertain, and if it fails those who undertake it are in the jaws of the lion; and therefore it is not for the first nor the second nor for many subsequent offenses that the judge is impeached, but it is when the patience of the people is worn threadbare, and after they can stand the misbehaviors of the judge no longer, that this extreme remedy is resorted to.

He was not impeached for nonresidence in his district from 1894 to 1900 or 1903, but when the time came, when the patience of the people of Florida was worn out, then they had a right to take up all the offenses that he had committed. There is no statute of limitations that runs against the United States; there is no statute of limitations that runs against the people of Florida. They had the right to go back and complain of the fact that this judge had not resided in their midst up to 1903; that after this impeachment proceeding commenced, then, for the first time, his wife purchased a house there; and there is no testimony in this case that up to this hour he or she have ever resided in it.

What are called the "contempt cases" present serious charges against this judge. They involve the question whether a Federal judge has the right, without authority of law, to commit to prison and disgracefully punish a citizen of the United States. They involve the question whether the citizens of the United States have a right to the protection of that part of their Constitution which provides that all criminal trials, except in cases of impeachment, shall be by jury, and they involve the question as to the right of the people of the United States to the protection of that clause of their Constitution which provides that they shall be exempt from unusual and severe punishments. This judge put into prison and subjected to a fine two members of the bar of this court, having, as I believe, no more power, no more right, and no more authority to do it than he would have to imprison a Member of this House to-day.

Mr. COCKRAN of New York. Mr. Speaker, will the gentleman permit a question?

The SPEAKER. Does the gentleman yield?

Mr. PALMER. Certainly.

Mr. COCKRAN of New York. My seat in the Chamber is so far distant that I have not been able to follow the gentleman's speech as well as I desire, and so have not heard everything. In discussing the question of the nonresidence of this judge, I am not aware whether the gentleman from Pennsylvania [Mr. Palmer] mentioned any particular instances in which litigants were oppressed or deprived of prompt service by reason of this nonresidence.

Mr. PALMER. Mr. Speaker, I did not mention any incident, but the testimony is quite full on that subject. I have extracted the testimony and will print it as part of the record. A number of witnesses testified that they had been inconvenienced, that they had been subjected to unnecessary expense, and, in point of fact, of course it would make no difference really whether litigants had been inconvenienced or not.

Mr. COCKRAN of New York. Oh, I understand that.

Mr. PALMER. That is, on the question of whether the judge was bound to obey the law.

Mr. COCKRAN of New York. I understand that. Was there testimony to that effect?

Mr. PALMER. Oh, yes; plenty of testimony, and I can refer the gentleman to it if he wishes.

Mr. Speaker, the present purpose of this argument is to show, first, that the Federal courts of the United States are limited as to the cases in which they can punish and in their power to punish con-

tempts by the act of 1831. Now, let me state that proposition again: The Federal courts are limited by the act of 1831 as to the cases in which they can punish contempts and as to the character of the punishment. The act of 1831 is a limitation on the power of the Federal courts, and was passed for that purpose.

Second, that Davis, Belden, and O'Neal were committed to prison for alleged contempt of court on nothing that gave Judge Swayne lawful authority to punish either of them for contempt under the act of 1831 or under any other act.

Third, that if Judge Swayne had the authority under the act aforesaid to punish either of them for contempt, and if they were properly adjudged guilty of contempt, then he abused his power by imposing upon them an unlawful sentence.

Fourth, that Judge Swayne imposed the unlawful sentence either knowingly or ignorantly. If he did it knowingly, then he is guilty; if he did it ignorantly, then he is guilty if he did it maliciously or willfully, or for any other motive except to vindicate the dignity of his court.

Those are the propositions, Mr. Speaker, that I shall endeavor to establish. First, that the power of the Federal courts over contempts is limited by the act of 1831. I have the act, and I shall send it to the desk and ask the Clerk to read it.

The Clerk read as follows;

CHAPTER XCIX.—*An act declaratory of the law concerning contempts of court.*

*Be it enacted, etc.,* That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts.

SEC. 2. *And be it further enacted,* That if any person or persons shall, corruptly or by threats of force, endeavor to influence, intimidate, or impede any juror, witness, or officer in any court of the United States in the discharge of his duty, or shall, corruptly or by threats of force, obstruct or impede, or endeavor to obstruct or impede, the due administration of justice therein, every person or persons so offending shall be liable to prosecution therefor by indictment and shall, on conviction thereof, be punished by fine not exceeding five hundred dollars or by imprisonment not exceeding three months, or both, according to the nature and aggravation of the offense.

Approved, March 2, 1831.

MR. PALMER Mr. Speaker, I invite the attention of the House to the history of this act. It is instructive and interesting. It is entitled "An act declaratory of the law concerning contempts of court." It was passed in 1831. That was immediately after the Peck case, which was tried in 1830, had been concluded. Judge Peck was impeached for striking a lawyer off the rolls and for putting him in jail for 24 hours because he criticized an opinion of the judge in a certain case which had been published in a newspaper. In that case the contention on the one side and on the other turned upon the question as to the power of the Federal courts in cases of contempt.

On the one side it was contended, with all the zeal and vigor that the learned counsel for the judge possessed—and among them was William Wirt—that the Federal courts had all the power to punish

contempts that any courts possessed anywhere; that inherent in a court, as a part of its constitution, necessarily the power to punish contempt wherever committed must be lodged; that the Federal courts had all the powers of the court at Westminster Hall before the Revolution; that they have all the powers of the common-law courts. On the other hand, the contention was that the Federal courts were courts of limited jurisdiction; that they had no power except that conferred by acts of Congress; that they could do nothing except by vouching some act of Congress supporting the authority; that the acts of Congress provided only for the punishment of contempt committed in "any cause of hearing before the same" court. That is the act of 1789. The Peck case concluded nothing, because 20 Senators voted in favor of convicting Peck and 22 voted against convicting him.

As it required a two-thirds vote he was not convicted and the case concluded nothing, but at the very next session of Congress Mr. Draper, a member of this body, introduced a resolution authorizing the Judiciary Committee to inquire whether or not it would be feasible to pass an act of Congress which should define the power of the Federal courts over contempt, and limiting the punishment which a Federal judge could impose on a citizen of the United States, and as a result of that investigation this act of 1831 was passed. Mr. Draper said in his remarks, which were made on that occasion and which were published, that he wanted to know and he wanted to be able to read in the statute when he was violating the law that would subject him to be imprisoned at the whim of a judge; and in answer to that inquiry and for the purpose of defining the rights and duties of the judges of the Federal courts and the rights and privileges of the citizens of the United States, this act was passed, and it is so plain that the wayfaring man, though a fool, need not err therein.

It provides that the Federal courts may punish contempts that are committed in their presence or so near thereto as to disturb the administration of justice. That is plain enough. It provides that they may punish contempts committed by the officers of the court in their official transactions. That is plain enough. It provides that any person who violates the order, the command, the decree, or a rule of the court may be punished as for a contempt. That is plain enough. And the second section provides for the offense which Lawless committed and for the offense which Davis and Belden and O'Neal committed, if they committed any. It provides that offenses of that kind which are endeavors to obstruct the administration of justice, or impede or hinder it, shall be tried, not as for a contempt where the judge is the judge, the jury, and executioner, but they shall be tried by an indictment where a citizen of the United States has the right to come before a jury of his peers. That is where this man sinned. Well, he need not have sinned, because the Supreme Court of the United States have passed upon this act. They have construed it, and the court has said as plain as language can say that this act is a limitation upon the power of Federal judges, and that the three cases I have mentioned are the only ones in which they can impose a penalty for contempt of court. (Ex parte Robinson, 19 Wall., 511.) Now, then, I am contending that Davis and Belden did nothing to bring them within the limits of this act.



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Mr. CHARLES B. LANDIS. Was an appeal taken in that case?

Mr. PALMER. It went to the circuit court, and the judgment was reversed in part. Of course, the circuit court could not go into the merits. There was no appeal on the merits. What were the facts in the Belden and Davis case? Why, Judge Swayne arraigned them before the bar of his court for contempt because they brought a suit against him in the courts of Escambia County, Fla., in which they charged that their client was the owner of a certain piece of land and that Judge Swayne was sufficiently interested to be made defendant in the case and they published, or caused to be published, in a newspaper the next day the fact that such a suit had been brought.

Mr. SHERLEY. Will the gentleman inform me about one question of evidence? I have been unable to find in the testimony evidence to show that the statement filed in the paper Sunday morning was prepared by these lawyers. Is there any evidence to that effect in this record?

Mr. PALMER. Well, I do not know whether there is or not, but in point of fact it was prepared by Paquet, that New Orleans man who was there, and who went away to New Orleans because his family was sick. I think it is in the record somewhere; but there is no dispute that Paquet prepared that statement.

Mr. SHERLEY. Is there any evidence to show that either Davis or Belden did?

Mr. PALMER. I do not think there is.

Mr. CHARLES B. LANDIS. Is the statement in the record?

Mr. PALMER. Yes, sir.

Judge Swayne's position was this: That these men brought this suit against him, and they had published in a newspaper an account that they had brought the suit, and that the purpose they had in bringing the suit was to force him to recuse himself in a case which was on trial before him, or which was at issue in his court. That was the case of Florida McGuire against the Pensacola Land Co. and a number of other defendants. That was one purpose, he said, to force him to get some other judge to try that case. That is what it means to "recuse himself." Secondly, he alleged that they meant to insult him and to degrade him in the eyes of the people by practically doubting the word he had given that he had no interest in the land.

The facts out of which the controversy grew were these:

Judge Swayne had contracted for a certain piece of ground called "Block 91," in the city of Pensacola. He had agreed with the agent who had the land to sell upon a price and upon the terms and the conditions of sale.

There was nothing left to be done in that case but to pay the money and to take the deed. There is no doubt about that. Then he went up home to Guyencourt, Del., and the agents, Watson & Co., wrote him a letter in which they said to him, "The owner of this land, a Mr. Edgar, who lives in New York, will not give a general warranty deed for it; he will only give a quitclaim, because he is afraid of the claim of the Caro heirs." That is what their letter said.

And they went on to say further, We are satisfied that the quitclaim is just as good as the warranty, because the title is all right; but if you are not satisfied with the quitclaim, then you can leave it until you come here and we will send you the papers for the other lands. There were some other lands involved in that trade. Judge Swayne

wrote back to them, "Omit block 91, and send on the papers for the rest."

That was the state of the case, and Belden & Paquet, who were lawyers for the plaintiff in the Florida McGuire case, which involved the title to this very land, found it out. They found it out from the general rumor in Pensacola or from conversation with the agent or in some other way that Judge Swayne had purchased this piece of land.

Mr. NORRIS. You mean this block 91?

Mr. PALMER. Block 91.

Mr. HENRY of Texas. I would like to interrupt the gentleman. Is it not a fact that the record shows that Watson & Co., the real estate agents, brought a suit against Edgar for commissions for selling this land to Judge Swayne, and secured a judgment against him for the commission?

Mr. PALMER. They brought a suit, but did not get a judgment. That was one of the circumstances that attracted the attention of these lawyers. There is no doubt about the fact that Judge Swayne had negotiated for this land and agreed on terms of purchase. Now, the transaction was all completed, except getting the deed and paying the purchase money. Then, when this firm of real estate agents in Pensacola wrote to Judge Swayne, they said to him: "The owner of this land will not give a warranty, but will only give a quitclaim, and you can leave it until you come down, or you can drop the block out, and we will send you a deed for the other." He wrote back: "Omit block 91 and send on the papers for the rest."

They sent on the papers for the rest, and they sent on a mortgage and a note. They left the amount to be paid by Judge Swayne blank, and they invited him to fill in whatever amount he was willing to pay. That was strange. That being the state of the case, the lawyers for the plaintiff in the Florida McGuire case wrote a letter to Judge Swayne and politely, decently, and properly asked him to recuse himself; that is, to get out of that case and to secure some other judge to try it. To that letter Judge Swayne paid no attention. He never answered the letter at all. But on the 5th of November he appeared in Pensacola, and his court was opened. Then he remarked from the bench that he had been asked to recuse himself in the Florida McGuire case, but that the request was not in proper form, in the first place, and, in the second place, that while he had bargained for this land he had found out through a letter written to him by the agents that it was in litigation before him, and therefore he had abandoned the contract.

Well, that statement was not true. The letter written to him by the agent did not inform him any such thing. The letter written to him by the agent never informed him that the property was in litigation before him. But in the letter the statement was that the Caro heirs claimed title to this property. There is nothing in the record of Judge Swayne's court to give him information that there was litigation before him concerning the tract claimed by the Caro heirs when he sent them word to drop out lot 91. He said, in his statement, he had bought this land for a relative. That was the first statement made on the Monday; later on in the week he said that that relative was his wife and that she was purchasing this land out of funds that she had received from her father's estate.

The practice of that court was to try the criminal cases first, and after the criminal list was finished to take up the civil list, call the list and fix the cases for convenient days thereafter. Now, the criminal list was not concluded until 5 o'clock on Saturday evening, and Judge Swayne took up the civil list and called this case of Florida McGuire against the Pensacola Land Co., Mr. A. C. Blount, and certain other defendants, and told the counsel of the plaintiffs before him that the case should be tried on Monday. This was Saturday evening at 5 o'clock. The counsel stated that it was impossible to get ready for this case by Monday. Relying on the practice of the court, they expected to get a day or two, or some reasonable time, to get the witnesses. They said: "We can not get ready for this case on Monday." Judge Swayne said, "You will try this case on Monday unless you lay legal ground for a continuance." They told him that there were 30 or 40 witnesses to subpoena and they could not get ready on Monday, and they asked him, "Give us till Thursday?" and he said "No"; and then they asked him, "Give us till Tuesday?" and he said, "No; on Monday you go on."

What under the circumstances had these lawyers the right to think; what under the circumstances of the case had they the right to think? Did they have the right to think that they were going to get a fair trial before Judge Swayne? They had the right to think that insamuch as he had bargained for the land, that he had agreed upon the price for it, they had the right to believe that he had made up his mind on the question of the validity of the title, whether from his own investigation or the investigation of some other person, or because some man in whom he had confidence had told him the title was good. Under these circumstances could Judge Swayne bring to the consideration of that case the fair, impartial mind that a judge is bound to have in every case? He bought this land; I do not care whether he threw up the trade or not.

He said, "Omit block 91." What did that mean? Did that mean that he had abandoned it absolutely, or did it mean that after he had settled this title in his court in favor of these defendants he could go back and take up the negotiation and say, "Now I will take lot 91"? What had these lawyers to do? Why, exactly what they did do. They said, "We will discontinue this case in Judge Swayne's court; we will go into court on Monday morning and discontinue that case and bring suit against him in the courts of Florida, and if he has bought this land, as we believe, and he stands in the place of Mr. Edgar, the owner, we will see whether he has got title to it or whether Edgar has got title to it, or whether we have the title." When the question was put to Judge Swayne whether or not these lawyers did did not have the right to bring that suit, he says, "Yes, of course they had the right to bring it," and of course they had the right to put the piece in the paper next day stating that it had been brought; and the only thing that he complains of was that it was an attempt on their part to force him to do what he declined to do, viz, recuse himself in the case of Florida Maguire.

Well, I say that if that was their intention—of which there is no proof; they denied it and there was no proof on the subject, except what Judge Swayne gathers from the circumstances, there is no testimony on that subject—I say that if that had been their intention, a man can not be disbarred and put in jail for a bad intention. I



may intend to kill you, but if I do not kill you there is no law to punish me for it. I may intend to do many things, but there is no law to punish men for bad intentions if they are not executed. In point of fact the testimony was full and complete that these men agreed together to discontinue the case of Florida Maguire in Judge Swayne's court as the first thing that they would do in connection with bringing this suit, and in point of fact they did go into Judge Swayne's court and they did discontinue the case of Florida Maguire with his consent. And then what did Swayne do? Why, he agreed with a lawyer named Blount, who was one of the defendants in the Florida Maguire case, and who was also lawyer for the defendants—Judge Swayne agreed with Blount over Sunday, when he saw this publication in the newspaper, to put these men up for contempt, and as quick as the case of Florida Maguire was discontinued Mr. Blount arose and stated that these men had been guilty of a contempt of court, and moved that they be punished. Well, there was a wonderful unanimity of opinion between Blount and Swayne. They agreed beautifully on that subject. Of course, Blount was the last man on earth that Swayne ought to have gone to to have moved the contempt proceeding, because Blount was one of the defendants in the Florida Maguire case, and he was lawyer for the other defendants. He was the man whose grist Swayne had been grinding out by refusing to recuse himself. And yet he was the man who was selected by Judge Swayne to move this contempt proceeding. The next day Davis and Belding were arraigned before the court and they put in their answer, in which they explained the reasons why they brought the suit, in which they purged themselves of the contempt.

Then Judge Swayne went through a sort of a perfunctory trial, if you could call it a trial, and in about a half an hour he sentenced these men to pay a fine of a hundred dollars and to be imprisoned for 10 days and to be disbarred and stricken from the roll of attorneys for two years. For what? He said they had a right to bring the suit, and we know they had the right to publish it in the newspaper; but he said they did it because they intended to degrade him and blacken his character—because they intended to force him out of the Florida Maguire case. Well, if he had read the law, which he is presumed to know, he would have known that that offense, if it was an offense, was punishable under the second section of this act and not under the first; that the second section was passed for that very case, passed to meet the case of a lawyer who, outside of the court, criticized an opinion of the judge; and in that case the lawyer had been a lawyer in the case, and the case was still pending in the supreme court, and there were many other cases depending on that opinion.

Those were the facts under which this man imposed this sentence. He either did it knowingly—that is, he knew the law and imposed the sentence—and if he did it knowingly he is guilty, because he imposed an unlawful sentence (there is no dispute about that; the statute provided that he might fine or imprison, but he fined and imprisoned), and when the case was taken to the circuit court of appeals that court said that he had exceeded his jurisdiction, that he could not do both; but inasmuch as these men were lawyers, and as on the face of the papers he seemed to have jurisdiction, the circuit court could not look into the merits of the case to see whether he had done right or not, but they could say that he had exceeded his jurisdiction, and they

gave the lawyers an opportunity to pay the fine or go to jail. One of them went to jail and the other paid the fine. So that there is no doubt about the unlawfulness of the sentence.

Mr. SHERLEY. Can the gentleman tell the House of any decision of the Supreme Court of the United States upon the question as to the power of a court, on a proceeding in the nature of habeas corpus, to review the merits of a contempt proceeding? I want to know whether there is such a decision.

Mr. PALMER. There is no such decision.

Mr. CHARLES B. LANDIS. I would say to the gentleman from Pennsylvania that a case of that kind came from Indiana within the last year.

Mr. PALMER. And the Supreme Court took jurisdiction and did review the merits and release the defendant.

Mr. CHARLES B. LANDIS. Yes.

Mr. COCKRAN of New York. On habeas corpus.

Mr. PALMER. On habeas corpus; and whenever that court take a fancy to look into the proceeding they do it, and whenever they do not take a fancy they say that have no power.

Mr. SHERLEY. That is the point I wanted to get at.

Mr. PALMER. When they want to do it, they have the power, and when they do not want it they have not got it; and I propose to introduce into this Congress a bill giving every man who is punished for contempt by any judge a right to appeal to some court on the merits. [Applause.]

As I was saying, Judge Swayne had the right to impose the sentence or he did not have the right. If he had the right and he imposed an unlawful sentence, he ought to be impeached. If he did not have the right and imposed it in ignorance of the law, or did it maliciously and for bad motives, he ought to be impeached. That catches him going and coming. [Laughter.]

Now, did he know the law? I need not state to this body of lawyers that every man is presumed to know the law, and, within certain limits, that is a conclusive presumption. If I steal my neighbor's property and carry it away and convert it to my own use, it is no excuse for me to say that I did not know that was larceny. If I aim a deadly weapon at my neighbor and put a bullet into a vital part, I can not excuse myself by saying I did not know that he would die. *Ignorantia juris non excusat*.

Mr. OLMSTED. You might excuse yourself by saying you didn't know it was loaded.

Mr. PALMER. We inherit this maxim from the civil law and it has been the law since "Rome sat on her seven hills and from her throne of beauty ruled the world." It is a part of the jurisprudence of every civilized nation, and it will be the law until "the heavens are rolled together like a scroll and the angel shall stand with one foot on sea and one on solid land and proclaimed that time shall be no more."

*Ignorantia legis non excusat* is particularly applicable to Judge Swayne. He could not be a lawyer until he knew the law. He ought not to be a judge until he knows the law. He ought not to try to excuse himself on the ground that he did not know the law. I have got this to say of Judge Swayne: He had the manliness and the courage to stand up and not plead the baby act, as those who apologize for him will do. He did not come here and say, "I was ignorant."

but he came and said, "I did know the law and I am within my rights, and I punished these men as I had a right to do." That is what he said.

Now, if he was ignorant of the law, if the excuses of his apologists are to be entertained, and if he made a mistake in imposing this unlawful sentence, then, if he did it maliciously or for any bad motive—if he sought to punish these men not because they had infringed the dignity of his court, but because they had put upon him a personal insult—I say, if his motive was malicious, then he is guilty and ought to be impeached. His authority as judge—his judicial authority—was put in his hands not for the purpose of punishing his enemies but for the purpose of facilitating the administration of justice.

Was he ignorant? If he was—for the sake of argument let us admit that he was. If he made an innocent mistake when he imposed this unlawful sentence, then was he malicious? Well, that is a condition of the mind. His intentions were a condition of his mind. A judge who imposes an unlawful sentence is not apt to declare his intention in advance, and he is not very apt, after he does it, to confess that he has done it maliciously.

You have got to get at the facts as to his intention just as you do any other fact, and as a judge is a man like any other human being you have a right to judge of his intentions the same as you judge of other people's intentions. What did Judge Swayne do? He imposed this unlawful sentence, and he did it in a case where his personal dignity had been affronted. He found as a matter of fact that these men did this thing for the purpose of forcing him to recuse himself without testimony. He got the last man, I think, that he should have gotten to move the contempt proceedings. He put these men up without submitting them to interrogatories that ever since the days of William Blackstone have been submitted, and thus did not give them an opportunity to purge themselves from contempt, as he should have done. Was he malicious? Well, from his action, from what he said when he imposed the sentence, we can judge what his motives were. When these lawyers appeared before the bar—the trial was about a half an hour long; they were lawyers, mind you, one of them was a young man just entering on his career, with about three and a half years of practice; the other was an old man past three score years and ten, who had been attorney general for the State of Louisiana; he had been sick about a week and confined to his bed, a poor old man shivering on the brink of the grave—when these men were brought before Judge Swayne he denounced them as ignorant.

He said, "You are a stench in the nostrils of the community." When his attention was called to that language he stated before the committee that he addressed them in the same way that he always addressed prisoners and criminals. Was he malicious? Did he do this act maliciously? Was he imposing this awful sentence maliciously—disbarment for two years, which spells ruin to a lawyer; imprisonment for 10 days in the county jail among the common criminals, disgraceful to the last degree; a fine of \$100—did he impose this awful sentence on these men because he wanted to vindicate the dignity of his court, or did he do it because he meant to wreak his vengeance on them and to use the power that the law permitted to him to punish his enemies? Now, that is a question for the jury.

Mr. BOWIE. Mr. Speaker, may I ask the gentleman a question?  
The SPEAKER pro tempore. Does the gentleman yield?

Mr. PALMER. Certainly.

Mr. BOWIE. I understand that the evidence shows that a statement was given out by one of the attorneys for the plaintiffs on Saturday night, which was published on Sunday morning, to the effect that a suit in the State court had been brought and that the suit in the United States court would be dismissed the next day. Is that true or not?

Mr. LITTLEFIELD. Did the notice so state? Not by any means.

Mr. BOWIE. I just wanted to know.

Mr. PALMER. Excuse me, Mr. Speaker, but if the gentleman from Maine [Mr. Littlefield] is making this speech and is answering these questions, I shall sit down.

Mr. LITTLEFIELD. Oh, I beg the gentleman's pardon most humbly.

Mr. PALMER. I grant it, but I shall ask the gentleman not to do it again.

Mr. COCKRAN of New York. Mr. Speaker, could the gentleman from Pennsylvania [Mr. Palmer] tell me at what page I can find the language of the judge in this contempt proceeding—the language in which he addressed these defendants?

Mr. PALMER. The gentleman will find it in the testimony of Messrs. Davis and Belden.

Mr. CHARLES B. LANDIS. Did he admit that he used that language?

Mr. PALMER. He did not deny it. Yes; I think he did admit it.

Mr. COCKRAN of New York. I would like the exact page on which the language appears.

Mr. CHARLES B. LANDIS. I could not find that he admitted that he did use that language; but I understand the language as reported came from the witnesses from memory.

Mr. PALMER. Did the gentleman read his statement that he made, 13 pages long, a typewritten statement, printed in the record here?

Mr. CHARLES B. LANDIS. No; I did not.

Mr. PALMER. I would suggest to the gentleman that he read that.

Mr. GAINES of Tennessee. What excuse does Judge Swayne give for both fining and imprisoning these lawyers?

Mr. PALMER. Oh, nothing. He says he made a mistake.

Mr. GAINES of Tennessee. Did he say that because the court reversed him on that proposition?

Mr. PALMER. He said if after the court reversed him.

Mr. HAMILTON. I understood the gentleman to state that Judge Swayne knows the law.

Mr. PALMER. Why, he did say he knows the law.

Mr. COCKRAN of New York. Is there any doubt, dispute, or question anywhere that this language which the gentleman has quoted was used by Judge Swayne on this impeachment proceeding?

Mr. PALMER. No; I do not think there is any doubt about it or dispute about it.

Mr. CLAYTON. I can give the gentleman the page.

Mr. LITTLEFIELD. Mr. Speaker, I do not understand that he did use that language. It is absolutely disputed.

Mr. PALMER. Very well, now who disputes it?

Mr. LITTLEFIELD. I do.

Mr. PALMER. Yes. Was the gentleman there?

Mr. LITTLEFIELD. Well, now, I will say this to the gentleman; he will hear me when I get around to the discussion.

Mr. PALMER. I am asking the gentleman a plain question. The gentleman says that he disputed it, and I ask him if he was there?

Mr. LITTLEFIELD. No.

Mr. BUTLER of Pennsylvania. Did the judge in his statement admit it?

Mr. PALMER. Yes.

Mr. LITTLEFIELD. The record shows that he disputed it.

Mr. CLAYTON. Mr. Speaker, with the permission of the gentleman from Pennsylvania [Mr. Palmer], I will answer the question propounded by the gentleman from New York [Mr. Cockran], and read the following from the testimony of Mr. E. T. Davis, found on page 126 of the testimony:

Q. Can you state what he said?—A. I don't know that I can state it in so many words. He called us ignorant; said our action was a stench in the nostrils of the people, and a good many other things I can not repeat.

Q. His manner was very harsh and abusive?—A. Extremely so.

Mr. CHARLES B. LANDIS. Will the gentleman recite that page of the record where the judge admits that he used that language?

Mr. CLAYTON. I will look that up in a moment.

Mr. PALMER. Now, Mr. Speaker, I was on the subject of what Judge Swayne's motives were in sentencing these men and endeavoring to establish the proposition that if he was ignorant of the law, as his apologists say, then he maliciously and willfully, and to wreak his vengeance, imposed this sentence.

Another evidence of that fact is found in the fact that he struck these men off the roll of attorneys for two years. It is very true that when his attention was called to the law that he could not in a proceeding for contempt also disbar these men, he relieved them from that portion of the sentence immediately. After Mr. Blount, his next friend, his amicus curiæ, called his attention to the fact, then he says he reflected for a moment and concluded he could not do that, and he remitted that part of the sentence.

But, Mr. Speaker, that does not in any way change the condition of Judge Swayne's mind when he put it on. What we are driving at now is to find out what he had in his heart when he imposed upon these men this awful sentence of two years' disbarment. Why, what does that mean for a lawyer, to be struck off the rolls and deprived of his means of livelihood for two years? Mr. Speaker, the Supreme Court of the United States has passed upon that subject in a case which I quote. They say that a lawyer's profession is his property; that he can not be deprived of it, except for very extreme reasons; that he ought not to be deprived of it when any punishment less severe would accomplish the end desired.

Admission as an attorney is not obtained without years of labor and study. The office which the party thus secures is one of value and often becomes the source of great power and emolument to its possessor. To most persons who enter the profession it is the means of support to themselves and their families. To deprive one of an office of this character would often be to decree poverty to himself and destitution to his family. A removal from the bar should, therefore, never be decreed where any punishment less severe, such as a reprimand, temporary suspension, or fine, would accomplish the end desired. (Brady and Fisk, 13 Wall., p. 355.)



It spells ruin to the lawyer so disbarred, as his capital is the confidence of the clients, and if that confidence is disturbed or shaken, if he is stricken for two years from the rolls and forbidden to practice, why does not that ruin him? It does ruin him. And is not that an evidence that this judge had something in his heart besides the desire to vindicate the integrity of his own court? Then the severity of this sentence is another indication. In the case of Judge Peck the sentence was the lawyer should be imprisoned for 24 hours and be disbarred for 18 months in addition; and yet Mr. Buchanan, who was of counsel of the board of managers in this case, waxed eloquent on the subject that this was a cruel and unusual punishment. In this case, in addition to the imprisonment, there is also a fine of \$100 and there was also a disbarment for two years, which was a cruel and unusual punishment, even if the judge had been right that the purpose of these lawyers had been to do what he said it was.

Mr. POWERS of Massachusetts. Mr. Speaker, if the gentleman will yield I would like to call his attention to what Judge Swayne said on page 593 of the record, near the top of the page:

Q. You say you used no harsh language in imprisoning them?—A. I say I used no unnecessarily harsh language. I think I spoke to them as they deserved to be spoken to by a judge speaking to lawyers under those circumstances. I can not recall my words.

Q. You say it was not “unnecessarily harsh”?—A. I think it was not unnecessarily harsh.

Q. Although it might have been too harsh?—A. I generally speak to a prisoner when I sentence him as I think he deserves. It must be at all times very unpleasant for the prisoner; there is no question about it; but that is not the fault of the court.

Mr. COCKRAN of New York. Mr. Speaker, I would just like to say to the gentleman from Pennsylvania and the gentleman from Massachusetts that I consider this the gravamen of the entire accusation, and when the gentleman from Pennsylvania stated that the judge charged these men with being a stench it was a character of language that it seems to me of itself almost to be a characterization of the entire proceedings. Now, the language just quoted is not precisely that. The language just quoted, as I understand it, is that the conduct was a stench, which, while we may have different opinions as to the propriety of the language, possesses a different significance, and what I would like to find out is what language was actually used, and especially if that judge made use of it.

Mr. PALMER. Well, that is what the witnesses testified to.

Mr. COCKRAN of New York. Well, but here it says “conduct.”

Mr. PALMER. What is the difference between saying that “their conduct was a stench in the nostrils of the community,” if he did say so, and saying that “they were a stench in the nostrils of the community”? It seems to me it is a distinction without a difference. The point is they were a stench in the nostrils of the community.

Mr. OLMSTED. Because of their conduct.

Mr. SIMS. I would like to ask the gentleman from Pennsylvania how anything but their conduct could make them a stench?

Mr. COCKRAN of New York. A man's general conduct might be a stench and some specific conduct might be a stench. I do not say either language is proper. I merely wanted to call attention to the distinction and to get some accurate information before the House.

Mr. PALMER. When Judge Swayne's attention was called to the fact that he had stricken these men off the roll of attorneys he said in reference to that:

Upon a moment's reflection, the matter having been called to my attention by Mr. Blount, I saw that the contempt proceedings could not be joined with a proceeding to disbar them; that such sentence could only be pronounced on a separate proceeding for that purpose, and I immediately eliminated this phase of the sentence.

Mr. COCKRAN of New York. What page is that?

Mr. PALMER. Five hundred and eighty-three.

Mr. SCOTT. Read the next sentence.

Mr. PALMER. The gentleman from Kansas asks me to read the sentence on the next page.

That I imposed both fine and imprisonment was a mistake of law, which I was not cognizant of at the time.

And for his benefit I will read the next sentence:

That this fact is evidence of malice on my part toward these attorneys in imposing such sentence seems to be a vivid stretch of the imagination. I had no malice or personal feeling in the matter. I did have a keen interest in protecting the dignity of the court over which I presided; if I had been possessed of this feeling in the degree I have been charged with, would not the natural result have been a sentence of these attorneys to jail for 10 months instead of 10 days? The moderation of the entire sentence is my best answer to this charge.

Well, if that was a moderate sentence under the circumstances, I hope the bon Dieu will be good to the men that Judge Swayne imposes a severe sentence upon. If he intended to do these men justice and not wreak vengeance upon them, would he not have given this matter a "moment's reflection" before proceeding to disbar them?

He says himself that reflection convinced him he was wrong. He had reflected, then, before. If he had reflected a moment, before he would not have stuck them off the roll of attorneys. Of course it makes no difference that he relieved them of the sentence when it was pointed out to him it was wrong. What we desire to know is the condition of mind when he passed the sentence; and if the circumstances do not prove he was wreaking vengeance on these men, then you can never prove that fact on a judge unless he reduces his intention to writing and acknowledges it before a justice of the peace and has it recorded.

A MEMBER. Does it not also prove that he pronounces judgment without a moment's reflection?

Mr. PALMER. Yes; without any reflection.

Mr. GAINES of Tennessee. Judge Swayne says that these lawyers had a right to go and file this suit against him. It is undisputed here that he did have, or his wife had, an interest in this property.

Mr. PALMER. It is not undisputed. They bargained for it, and he says they threw it up.

Mr. GAINES of Tennessee. They had a right to believe that he did have such an interest, and therefore they had a right to file the suit. Did he give any reason why he did not leave the bench and have some other judge try the suit?

Mr. PALMER. None whatever.

Mr. GAINES of Tennessee. I want to remind my distinguished friend of what Judge Holmes recently said in the Beef Trust hearing before the Supreme Court. In substance he said to the lawyers trying the

case before the court: "I have an interest in some beef concerns out there (naming them). Have they anything to do with this lawsuit?" And the counsel for the United States and the counsel for the Beef Trust said, "No, nothing in the world"; and then went on with the case. I make that statement to show the difference between a man who wants to do the clean thing from start to finish and one who does not wish to do it.

Mr. PALMER. Any judge who had any appreciation of his position, the least desire to do right, would not have hesitated a moment to recuse himself. He would not have waited until the lawyers had requested him to do it. He would have said at once: "I bargained for this land and thought this title good; I can not try the case." Is there a judge on the face of the civilized earth who would have done as Judge Swayne did in this case? Did you ever hear of such a case? Judges are not generally looking to find work; they are generally trying to get rid of it, and if they can get out of trying a case they generally do it. If their relations, their sisters, their cousins, or their aunts, or wife's relations have any interest, remote or contingent, in a lawsuit, they always get out. I know a judge that will not try a case against a corporation if any of the family happen to hold a share of stock in that corporation. There is nothing on the record in this case that shows that Judge Swayne abandoned the contract, and even if he had given it up, in all decency he should have gotten out and procured some other judge to try the case.

Then there is the O'Neal case.

Mr. RANDALL of Texas. Is there anything to indicate whether or not the purpose of Judge Swayne was to intimidate other lawyers from attending to that case?

Mr. PALMER. No; I do not think so. The O'Neal case was another contempt case. He seemed to have a passion for them. I have had the honor to practice law over 40 years and I have never heard of but one contempt case in our court, and that amounted to putting a man in jail for 24 hours. Judge Swayne's record is full of contempt cases. The O'Neal case is that of a man who got into a fight with a man named Greenhut.

The facts were that Greenhut was a director in O'Neal's bank—the First National Bank of Pensacola—that the bank had loaned Scarratt Merino \$14,000 on a mortgage, and that Greenhut was present when the transaction was made. He knew that it was an honest transaction. He knew that Merino had the money and that the bank had sold the mortgage to somebody else. Merino went into bankruptcy. Greenhut was appointed the receiver, and he brought suit against the bank and the party who had bought the mortgage and alleged that it was a fraudulent mortgage. Mr. O'Neal met Greenhut one day and reproached him with having brought this suit when he knew the transaction was honest. One word led to another, and finally these men got into a fight.

O'Neal said he was much the smaller and weaker man; that Greenhut attacked him, and in his defense he took his knife and cut Greenhut, cut him so that he was laid up for some time; whereupon O'Neal was hauled up before Judge Swayne, in the Federal court, because he had obstructed Greenhut as a receiver in doing his duty as receiver. Now, was anything like that ever heard of before? The court was not in session. The judge was up at Guyencourt, Del., a thousand

miles away, or somewhere else. There was nothing done in the presence of the court or so near thereto as to obstruct the administration of justice; it was not done by an officer of the court; there was no resistance to any rule or decree or order. It was wholly an assumption of arbitrary power on the part of this judge, who snatched this bank president into his court and put him in jail for 60 days without authority of law.

When O'Neal tried to get his case before the circuit court they said they had no jurisdiction and they could not help him. When he tried to get his case before the Supreme Court of the United States they said they had no jurisdiction and could not help him; and then he died. He never went to jail, but he went up to that other tribunal beyond the grave. He escaped the vengeance of Judge Swayne and appeared before his Maker. [Applause.]

Poor Hoskins's case is not here now. Charley Hoskins, who was also brought up by Judge Swayne for contempt of court, said that he would die before he would go to jail; and die he did. He committed suicide. The track of this man since the time he was appointed a judge in Florida down to this date is spread all over with bankruptcies, scandals, and suicides. I believe he has not a friend on earth in the northern district of Florida. Political—oh, no; the strongest witnesses against him were of his own political party.

The next charge against this man is that he used the property of a bankrupt corporation, which was in the hands of a receiver appointed by him, without making any compensation to the company, and on the claim that he had the right to do it. If Judge Swayne had come before the committee and had said that as a matter of courtesy the receiver of this railroad furnished him with this car, and "I did not stop to think about the impropriety of it, but I used it because other judges did likewise, and I made no compensation; I do not think it was a proper transaction, but it was done," he might have had some standing before the committee and before this House. But he makes no excuse; he makes no such claim; but he is absolutely defiant, and says, "I used the car at the expense of the treasury of that company because the property was in my hands, in my court, and because I had the right to do it." Now, if he wanted to stand upon that proposition, he has got the chance to do it. He was asked this question:

You said this car was one of the cars in the possession of the court because the road was in the hands of a receiver?

This is in the testimony of Charles Swayne, and will be found on page 595. He answered "Yes." He was then asked:

You say that it was the privilege of the court to use that car because the road was in the hands of a receiver?

He answered:

Yes; that was the reason why it was used.

He was then asked:

You thought that, the railroad being in the hands of the court, you had the right to use the property of the railroad without rendering the railroad any compensation for it?

Judge Swayne evaded the question. He said:

The receiver in talking that over with me stated that it was generally understood that a car was in better condition running than if it were standing idle on a siding.

Then this occurred:

Mr. PALMER. Will the stenographer read that question, please?

The STENOGRAPHER (reading): "Q. You thought that, the railroad being in the hands of the court, you had the right to use the property of the railroad without rendering the railroad any compensation for it."

Mr. PALMER. That is the question.

The WITNESS. Yes, sir. I had 10 railroads in my hands as judge in six years.

[Laughter.]

Then he was asked the question:

Q. And you fancied you had the right to use the property of any of the railroads that were in the hands of the court whenever you pleased without rendering any compensation to the railroad for it?

He answered: "I would not say that."

If he had the right to use one, why not the right to use ten?

Now, Mr. Speaker, just consider that proposition for a minute. Consider the moral turpitude; just consider the moral insensibility of a man, a judge of a court, who could take that position. If he had a right to use the property of this railroad company without compensation, suppose the railroad company had a coal mine somewhere. Would he have had the right to have filled the bunkers in his cellar with coal? Suppose the bankrupt, instead of being a railroad company, had been a merchant. Would he have had the right to have gone into his stock and clothed himself and his family out of it? Why, it is ridiculous; it is preposterous.

What did he do? This receiver provisioned this car, and he put on a conductor and a porter at the expense of the railroad company, and he sent this car and this conductor and this porter from Jacksonville, Fla., to Guyencourt, Del., where Judge Swayne lived, and it lay there over night awaiting the convenience of the judge.

Then he and his wife and his wife's sister and her husband boarded this car that belonged to the Jacksonville, Tampa & Key West Railroad Co., and they regaled themselves upon the provisions provided by the receiver, and they traveled over the intervening lines on transportation furnished by the receiver to Jacksonville, Fla., and they did it at the expense of this company; and when this receiver's accounts came in, when this charge, which to a private individual would have amounted to four or five hundred dollars, came to be passed upon, Judge Swayne allowed it to the receiver as a necessary expense; and he stands here now and has the audacity to claim that he had the right to do it. I say if the Members of this House want to stand behind that proposition they will have an opportunity to do it, and they will do it on a yea-and-nay vote.

The last remaining count, on which the committee are unanimous with one exception, is that Judge Swayne ought to be impeached for filching money out of the Treasury of the United States by filing a false certificate, which is contrary to the act of Congress in such case made and provided. It is a crime for which he might be indicted. The facts are that in eight years he held court out of his district about 93 days in every year, and during that time he received about \$7,400 from the Government. He charged \$10 for every day that he held court outside of his district. The testimony shows, and there is no dispute about it, that he spent a far less sum than \$10 a day.

A MEMBER. Are any of these certificates in the record?



Mr. PALMER. There is one of them copied in the first article. In one case he held court 41 days at a place in Texas—I think it was Tyler. He boarded with a lady who was good enough to give him his board for \$40 a month, so he expended \$52.50. His traveling expenses from Pensacola to that point, going and returning, at a very liberal estimate for sleeping cars and board and everything else, would amount to \$50. For that he took \$410 out of the Treasury of the United States. That is a sample case.

Now, the law is that no judge of the United States who holds court out of his district shall receive any compensation therefor. That is positive and prohibitory. There is no way to get around that. And the law formerly was that he should have nothing for his expenses. But that law, as to expenses, was repealed, and then the judges were paid their actual expenses. Sometimes they charged as much as \$36 a day, and the Treasury would not stand it.

Mr. LACEY. I would like to ask the gentleman a question. From what source does the gentleman get his information about the cost of going from Jacksonville to Waco?

Mr. PALMER. From the testimony of a witness who made the journey.

Mr. LACEY. I made an inquiry of the passenger agent to get the rate, and the round-trip rate is about \$50, without any sleeping-car fare, without hotel bills, or any other expenses.

Mr. PALMER. We have the testimony of a witness who went over the route.

Mr. LITTLEFIELD. How much was it?

Mr. PALMER. I believe about \$50, from Pensacola to Waco.

Mr. LACEY. \$23.55, it is reported, is the regular fare one way.

Mr. PALMER. Let it be \$75 a day or let it be a hundred. Do not let us minimize this thing. Do not let us quarrel about tuppenny bits. He got more than he spent; that is what he did, and he filed a certificate that was not true to get it.

Mr. LACEY. Well, we ought to get the facts here, ought we not? We condemn him for not giving them, and at least the gentleman ought to give them to us.

Mr. GAINES of Tennessee. The facts are that this witness who has testified to this has been over this route and he has been sworn in this case.

Mr. PALMER. Yes.

Mr. GAINES of Tennessee. He is not connected with any railroad, I hope.

Mr. PALMER. The law is that the judge shall have no compensation and the law was that the judge might have his actual expenses. Then this law was passed to give him his reasonable expenses for travel and attendance; but if the Treasury Department caught a judge spending \$36 a day, as they had done before, they cut him down to \$10 a day. Ten dollars is the limit, but he can only have his expenses if they are less than \$10 a day.

I am told that some gentlemen here are of the opinion that because there is a rumor around the street somewhere, because some newspaper has published the statement and some men imagine that somebody else has taken \$10 a day when he did not spend \$10 a day, that there-

fore this man ought to be excused. Well, if a man is accused of stealing a chicken, do you think he could defend on the ground that some other man stole a chicken? [Laughter.] If any man is accused of an offense, can he defend on the ground that somebody else has done the same thing?

Mr. GAINES of Tennessee. Who are the judges that have done this thing?

Mr. PALMER. I say none. I say it is false. I say it is a slander on the judiciary of the United States. I say there is not a syllable of testimony in this record and not a syllable of testimony anywhere on earth that any judge ever did this thing but Judge Swayne. That is what I say. I say it on my responsibility as a Member of this House.

We are not trying this case on newspaper reports, thank God. Why, there has been published in the newspapers within a day or two a statement alleged to have come from the Treasury Department, in which five circuits have been enumerated. They do not give us the name of the circuit or where they are located, but they are lettered A, B, C, etc. They say that the record shows that 41 per cent of the judges of these circuits took less than \$10 a day—that is, for their actual expenses. Some took \$10 a day sometimes and less at other times. The remainder took \$10 a day. What does that prove? Now, I put it up to you, what does that prove? Does that prove that any of these honorable gentlemen took \$10 a day when they were not entitled to it? Do you want to assume that because a man takes \$10 a day he is not entitled to it? Why, if a judge holds court in Chicago, or Philadelphia, or New York, or Boston, or San Francisco, or any of the large cities, he could easily spend \$10 a day, and if he does spend \$10 a day he would be entitled to it. Do you propose to stop impeaching this man because you guess, without proof, that some other judge has done wrong besides this man? I would not care if every judge in the United States had done it. That would be no excuse for this man.

When Sir Francis Bacon, who has come down through history as the wisest and the meanest of men, was called to account for his crimes and misdemeanors in office, he was impeached for taking a bribe as a judge. Giving bribes to judges in those days was just as common as for judges to eat their dinners, and the reason why Bacon was impeached was because he took a bribe from a man and then decided his case against him. [Laughter.] He didn't stay bought. But it was no excuse for him, and the English Parliament did not for one second entertain the proposition because it was a common custom it was not an impeachable offense.

They said to Francis Bacon, "You are guilty," and that wisest of men was stripped of his judicial robes and sent in disgrace into retirement, as this man ought to be, even if all of the judges of the United States have been guilty of a like offense.

The question before this House, Mr. Speaker, is not, Shall Judge Swayne be tried? That has been settled by the solemn vote of this House, practically unanimous. You notified the Senate that in the name of the House of Representatives and of all of the people of the United States you impeached Judge Swayne, and you notified that high tribunal, the constitutional triers, that you would exhibit articles of impeachment and make them good. It is within the

power of the House to vote down these articles of impeachment and stultify itself, to make itself the laughing stock of the people of the United States and to drop the proceedings altogether. But you can not obliterate the fact that Judge Swayne has been charged with serious crimes and high misdemeanors. You can not obliterate the fact that the testimony in the case has satisfied a majority of the Judiciary Committee that he ought to be impeached. You can not obliterate the fact that these charges have gone broadcast through this country, and that the people of this country in their simplicity believe that the same law that applies to private citizens ought to apply to a judge. They believe that a man who steals is a thief, whether he be a private citizen or whether he is a judge. They believe that a trustee who loots the property in his hands has done a grave wrong. They believe that a judge who has abused his judicial power for the purpose of punishing a personal affront ought not to go unwhipt of justice.

They believe that a man who has deprived citizens of the United States of their liberty and subjected them to infamous punishment to gratify his malice, when he had no authority to do it, has abused his discretion, and that belief will never be eradicated by voting not to try him. The only place where the character of Judge Swayne can be relieved of this stain is before the body of constitutional triers. If I were a friend of Judge Swayne, I should be crying in season and out of season for a speedy trial. If these charges are frivolous, if they can not be supported, it will be all the more easy for him to vindicate himself. He can be vindicated only in the Senate of the United States. If I were Judge Swayne, I should cry without ceasing, not for a trial on the least of these offenses, but for a trial upon all. His good name is in issue. Nothing but a verdict of the Senate of the United States can make it clear.

Good name in man or woman, dear my lord,  
Is the immediate jewel of their souls;  
Who steals my purse steals trash; 'tis something, nothing;  
'Twas mine, 'tis his, and has been slave to thousands;  
But he that filches from me my good name  
Robs me of that which not enriches him,  
And makes me poor indeed.

[Prolonged applause.]

Mr. LITTLEFIELD. Mr. Speaker, inasmuch as the gentleman from Pennsylvania [Mr. Palmer] was allowed to proceed without limit, I do not know that I need to request unlimited time. I do not, however, wish to be interrupted in the course of the statement that I am about to make, and I therefore ask unanimous consent to proceed without limit.

Mr. PALMER. O, Mr. Speaker, I understand that the gentleman has charge of the time and he can go on as long as he pleases.

Mr. LITTLEFIELD. Very well. I shall then proceed without limit.

The SPEAKER pro tempore. The time is under the control of the gentleman from California [Mr. Gillett].

Mr. LITTLEFIELD. Very well. I did not know but that my time might be limited.

Mr. GILLETT of California. I yield to the gentleman such time as he wishes.

[Mr. Littlefield addressed the House. See Appendix.]

Mr. GAINES of Tennessee. I understand that my friend from Pennsylvania [Mr. Palmer] this morning stated that Judge Swayne said that these lawyers had the right to file this suit, that they did file the suit in the State court, and when they did that it seems the trouble came up in court Monday morning. Now, then, if that is true, Judge Swayne is guilty of punishing these men by fine and imprisonment for doing something they had the legal right to do, and as lawyers they should have done, and which he admits they should have done; and yet he not only fines them, but transgresses the law, which he ought to know, and did know, by putting them in jail. This is the way I understand the matter.

Mr. LITTLEFIELD. Let me say for the benefit of the gentleman from Tennessee [Mr. Gaines] he does say they had a technical right to bring the suit in a State court. He says they had no right to bring it for this purpose. He couples with that statement the statement that they had not the right to bring it for this purpose. Everybody concedes they had the right to bring this suit. That is a naked proposition. But that did not indicate a right to bring a groundless suit, or for this purpose.

Mr. DALZELL. I would like to ask the gentleman from Maine if it would not suit his convenience to go on with his address in the morning? It is getting late and Members are scattering.

Mr. LITTLEFIELD. I prefer to do so.

Mr. PALMER. About how much time will the gentleman occupy?

Mr. LITTLEFIELD. About three-quarters of an hour in the morning.

Mr. GAINES of Tennessee. Can not we begin earlier in the morning than 12 o'clock?

Mr. LITTLEFIELD. I do not know how that is, but I will begin when the House gets here.

Mr. BOWIE. Would the gentleman from Maine allow me to ask him one question before the House adjourns? I want to ask the gentleman one question.

The SPEAKER. The House will first be in order.

Mr. BOWIE. Just one question.

Mr. DALZELL. Ask your question in the morning.

Mr. BOWIE. It will take just a minute.

Mr. LITTLEFIELD. If the Speaker please, I suspend with the understanding that I have the right of way in the morning to conclude my remarks upon the articles of impeachment.

The SPEAKER. The gentleman from California [Mr. Gillett] absolutely controls the time. Does the gentleman from California yield to the gentleman from Ohio for the purpose of making a request?

Mr. GILLETT of California. Yes.

Mr. LITTLEFIELD. Mr. Speaker, I rise here at this time not for the purpose of either opposing or advocating any of these articles of impeachment. I am a member of the committee appointed by the House to formulate these articles, and the question now is whether the House shall adopt the articles pending before it. I shall not at any stage of what I may say urge any man to either approve or disapprove any article reported by the committee. I am not engaged in either the prosecution or the defense of Judge Swayne. If there be those who are now or have been, in advance of having been appointed managers

later on, prosecuting Judge Swayne, I am not of them. It is only my duty, as I apprehend it, to undertake to give to the House what the record in this case shows and what it does not show, and to analyze the facts, call attention to the law, and suggest the proper conclusions to be drawn therefrom. Later on I shall say what I propose to do in relation to the various articles as I reach them. This I conceive to be my duty. I have no criticism to make of any other Member of this House if he has any other conception of the duty that rests upon him. This is the view that I take of the proposition. I say in the outset that I do not disagree, except in a small particular, with the first proposition laid down by my distinguished friend the gentleman from Pennsylvania [Mr. Palmer], and that is as to what offenses are proper subjects of impeachment. I can not go quite as far as he went. I have no doubt that if the offenses that are set forth in these articles are sustained by the evidence beyond a reasonable doubt it will justify their adoption by the House, any or all of them. I think the articles are aptly and properly drawn. I participated in their preparation and in their shaping, as I felt it was my duty to do, whether I approve of them or whether I disapprove of them, because that is what this committee was selected for. But I can not go quite as far as my distinguished friend in the exuberance of his imagination, perhaps, did go in stating what would be impeachable offenses. He says:

A judge could be impeached for any misbehavior in office which evinced such turpitude, such a condition of mind or body, as rendered him unfit to perform the duties of his office.

Mr. Speaker, I don't know where he gets the turpitude of the body that he relies upon, and to that extent I can not go with him. Turpitude of mind I agree to; turpitude of body, until this proceeding, I had not heretofore heard of.

Now, I desire to congratulate the House upon one fact, and that is that the Members of the House on this afternoon are enabled to reach a consideration of these articles under circumstances that were not the privilege of the Judiciary Committee. At my request the clerk of that committee has placed upon the desk of every Member a copy of this record, printed, which, as far as it prints the record—mind you, as far as it happens to print the record—shows what the record is, and where it does not happen to print the record, it does not show what the record is, as I shall show as I go on. The Judiciary Committee did not have that high and proper privilege. I made a motion in the Committee on the Judiciary when this was pending before that committee, and just before the vote reporting the resolution of impeachment was adopted, that the matter be laid upon the table in order that it might be printed and the members of that committee might have an opportunity to read the case and know upon what they were voting.

But the distinguished gentlemen whose duty it was to investigate this case voted this resolution through the committee without giving me that poor privilege, and no man on that Judiciary Committee outside of the subcommittee, consisting of the distinguished gentlemen from Pennsylvania, California, and Alabama, had read that case when they favorably reported the resolution of impeachment.



More than 2,000 years ago a wise man said: "He that answereth a matter before he heareth it, it is a folly and a shame unto him." This great committee answered before hearing. Now, to go further, I say not only were the Judiciary Committee deprived of the opportunity to read this case in print—I do not say that a part of the evidence had not been transcribed, but none of it had been printed—by a majority of the committee present, not a majority of the whole Judiciary Committee, but a majority of the committee present, refused that privilege. Perhaps I might make this suggestion: My distinguished friend from Pennsylvania, before the recess, closed his address upon this question with a very eloquent and effective peroration, in which he quoted the Apostle James as saying: "That a man should be swift to hear, but slow to speak and slow to wrath."

Mr. PALMER. Did you say that was from the Apostle James?

Mr. LITTLEFIELD. Yes, sir; I do. I looked it up the other day, and it would have been very much better——

Mr. PALMER. I thought it was Jethro.

Mr. LITTLEFIELD. The gentleman wants to revise his scriptural quotations, perhaps. He is as much off in many things he has asserted in connection with this case before this House, as I will show from his own mouth and the record as I go on. I regret that the gentleman had not discovered his quotation earlier and then been a little swifter in allowing others to hear and a little slower to wrath and a little slower to speak.

Now, I want to go a little further and say that the most important piece of evidence in this case had not even then been transcribed from the notes of the stenographer when this case was voted upon by the committee—that is, the testimony of Judge Swayne himself, because the gentleman from Pennsylvania turned at my elbow when that vote was taken and asked the stenographer whether he had transcribed that statement, and the stenographer told him no. I only call your attention to this in order that you may appreciate the true significance of the action of this committee, and that you may realize the circumstances and conditions under which this action has been taken, so that the House may not misunderstand the weight to be given to the result of these alleged deliberations. I have another suggestion I want to make before I proceed any further, and that is this: As I proceed in the argument or in the summing I will esteem it a great kindness if any gentleman will call my attention to facts in this case that he feels that I misstate or overstate; if he will be kind enough to look at the record and call my attention thereto while I am making the statement. I do not intend to, but I may possibly misstate some of this testimony as I go on. I do not intend to do so, but I concede perhaps in the heat of debate I may do so; and I will look upon it as a favor for any Member to call my attention to any statement I thus make that is not sustained by the record. I have one more suggestion I want to make before I enter upon the discussion of these articles, and that is this, Is the gentleman from Florida present who introduced the articles?

Mr. GAINES of Tennessee. He was here a moment ago.

Mr. LLOYD. I will get him.

## BURDEN OF PROOF.

Mr. LITTLEFIELD. While he is coming in, I will state the burden of proof. I suppose the first thing we need to determine upon when we weigh and apply this testimony is the burden of proof—the burden of proof that will rest upon the House when it stands before the Senate for the purpose of sustaining these articles. I do not agree with some of my distinguished friends as to the basis upon which I should act in voting upon these articles. I do not feel at liberty to vote for any of these articles, unless I am satisfied that the record as it is now establishes the truth of the allegation beyond a reasonable doubt. Now, I do not think there is any question about that. On that point I think the law is all one way.

“On trials of impeachment the rules of evidence are the same as prevail in criminal trials before the ordinary courts of law.

“The same quantum of proof is required to warrant conviction, hence the guilt of the accused must be established beyond a reasonable doubt.” (Am. & Eng. Enc. of Law, Vol. XV, p. 1070; Story on the Constitution, p. 798; Cushing’s Law and Practice, Leg. Assem., p. 2569; State v. Berckley, 54 Ala., p. 599; State v. Hastings, 37 Nebr., p. 96; State v. Tally, 102 Ala., p. 25; State v. Robinson, 111 Ala., p. 482.)

I have examined all of these cases and they are absolutely uniform. I know of no authority the other way, so I start with the proposition that we must establish the truth of these allegations beyond a reasonable doubt. So far as I am concerned I will not vote to sustain any charge unless I believe that the evidence as it stands before us, giving due consideration to its weight and a proper construction to it, would require the Senate to hold beyond a reasonable doubt that the article was sustained. We should bear in mind, also, the further consideration which makes caution imperative, and that is, it is morally certain that this case will be weaker rather than stronger when the testimony is subjected to the test of legal admissibility and is met by the full defense.

Other Members suggest, I think, that we will vote upon these propositions and let the Senate say that we are simply a grand jury to find probable cause. That is not my view of the basis upon which a Member should act under the circumstances. I could not urge upon the Senate favorable action on an article that I did not believe was sustained beyond a reasonable doubt. I can not by my vote place any other Member in a position where he would be required to thus urge an unsupported article. So I proceed with the discussion upon the basis and assumption that the evidence must satisfy us beyond a reasonable doubt. Now, before I reach a discussion of the articles pending, I want to call the attention of this House to one thing. I understand that the gentleman from Florida [Mr. Lamar] is in the House. I desire at the very beginning of this discussion to give the gentleman from Florida [Mr. Lamar] the opportunity, which I have no doubt he will gladly court, of repudiating an alleged interview said to have been given by him during the pendency of this case, which in my judgment does great violence to his reputation as a gentleman and as an honorable Member of this House. I desire to clear the atmosphere in connection with this discussion.

I hold in my hand a copy of the Metropolis, printed in Jacksonville, Fla., of March 29, 1904, and this is the interview which I desire to give my friend opportunity to repudiate. And first I may say, further, that I was extremely well impressed with the very handsome and able and eloquent appearance presented by him when he introduced these articles originally, and for that additional reason I desire to give him this opportunity of straightening out this question in connection with this interview. The interview reads as follows:

Congressman Lamar, according to the Atlanta Constitution of yesterday, says the people of Florida have stood Judge Swayne just about as long as they can. And he is not going to hesitate to tell Congress, he says, if some action is not taken giving the people of his State relief, he is satisfied from prevailing conditions that Judge Swayne's life will be in danger. "I am going to tell them the story of Gesler and William Tell, and point to the scene in that solitary bathroom in Paris where Charlotte Corday found her victim."

Now, I will be very glad, of course—I can not insist upon it—to give my distinguished friend an opportunity now to repudiate that interview, and I hope he will be able to do so.

Mr. LAMAR of Florida. Mr. Speaker, I will say this, that I will be as frank in answering as the gentleman has been in asking. In Atlanta last spring, Mr. Speaker, during an interview—it might be called casual, because I was introduced to the reporter for the first time—a conversation occurred relative to Judge Swayne. In that conversation, Mr. Speaker, either upon his request or upon my own voluntary statement, I do not know which, nor do I think it is material, I cited somewhat the conditions in Florida in relation to this impeachment and relating to Judge Swayne. So far as any language quoted by the reporter imputes me, Mr. Speaker, any statement that Judge Swayne's life was in any danger, it is absolutely incorrect. I am not in the habit of repudiating a newspaper interview. As a general rule they are correct. What I said to that reporter was this, that if these proceedings in the House, after full inquiry, culminated in nothing, then it would be because, in my opinion, the House of Representatives did not understand the conditions in Florida and Judge Swayne's relation to that people as I understand them; that I looked upon him as utterly corrupt and utterly tyrannical, the most lawless man in the State of Florida. And I said, further, that from my place in the House of Representatives, not from that hotel in which I was then speaking—that being substantially the only mistake the reporter made, limiting the conversation to what I intended to say, as being made at that particular time, and the further mistake that I considered Judge Swayne's life was in danger—except as to these two mistakes, I stated—and I repeat it upon this floor and I intended to repeat it in my speech upon the merits of this case—that if nothing appealed to Judge Swayne, neither law nor humanity, in his own lawless career, then I would point out to him the fact that because of his arbitrary and tyrannical acts there might result from some ill-ordered or some vengeful brain, who had suffered at his hands, some personal violence to him. And I shall repeat that statement, and I repeat it here, if that is what the gentleman wants to know with a view to criticizing me.

Mr. LITTLEFIELD. I desire——

Mr. LAMAR of Florida. Let me complete my statement.

Mr. LITTLEFIELD. Certainly.

Mr. LAMAR of Florida. I have no objection to any fair criticism of that language, but consider it as delivered from my place in the presence of the House of Representatives. And I point to the conclusion of the report of a majority of the Judiciary Committee of this House upon Judge Swayne's conduct in Florida, and this is the language in which they close it.

It is vitally necessary to maintain the confidence of the people in the judiciary. A weak executive, or an inefficient or even dishonest legislative branch may exist, for a time at least, without serious injury to the perpetuity of our free institutions, but if the people lose faith in the judicial branch, if they become convinced that justice can not be had at the hands of the judges—

Now mark this language. I do not intend to speak disrespectfully to the gentleman, but I say to him, mark this language—

the next step will be to take the administration of the law into their own hands and do justice according to the rule of the mob, which is anarchy, with which freedom can not coexist.

Also, I repeat that language; I repeat it in parallel columns with my own, and I can not say any more in my remarks than is there said by high Members of this House; and I reassert my language from this place.

Mr. LITTLEFIELD. I beg the gentleman's pardon. Do I understand him to say that the interview that I have quoted is his language?

Mr. LAMAR of Florida. I have stated to you what I said in the interview.

Mr. PALMER. Well.

Mr. LITTLEFIELD. Well!

Mr. PALMER. He does not have to be cross-examined.

Mr. LITTLEFIELD. Do you have any interest in this controversy? Have you entire charge of this transaction?

Mr. PALMER. Not any more than you have.

Mr. LITTLEFIELD. Have you entire charge of this transaction?

Mr. PALMER. Not the slightest, and I do not care one bawbee what becomes of it.

Mr. LITTLEFIELD. You do not care a bawbee? That is shown by the way that you have taken charge of the entire case. I do not care to press the gentleman if it is not agreeable for me to ask him concerning this suggestion.

Mr. LAMAR of Florida. It is entirely agreeable to me for you to interrogate me.

Mr. LITTLEFIELD. Then I will ask, in substance, did you give this interview?

I am going to tell them the story of Gesler and William Tell, and point to the scene in that solitary bathroom in Paris where Charlotte Corday found her victim.

I understand you say that you did?

Mr. LAMAR of Florida. I reiterate that language; I used it.

Mr. LITTLEFIELD. You reiterate that language?

Mr. LAMAR of Florida. Let me reiterate it, and give it in my own way, and not in yours.

Mr. LITTLEFIELD. Let me go a little further.

Mr. LAMAR of Florida. You asked me a question; let me answer.

Mr. LITTLEFIELD. Certainly.

Mr. LAMAR of Florida. I say this here. It almost looks like reducing the question from the sublime to the ridiculous, in such a proceeding as this, to allude to a celebrated proceeding that happened once in the Virginia house of burgesses. I used that language, as reported, pointing out that Charles Swayne was the most lawless man in the State of Florida; that in the whole world it has occurred to men in all stations of life—official as well as unofficial—to meet, in the course of a tyrannical career, some rebuke. If it did not come from constituted authorities, it came from some ill-regulated mind, or some man that was carried away with the passion of a victim of oppression, and that such a man met the fate of tyrants; and I submit it to this House that this language is not capable of being misconstrued by anyone here. I deny that there is any suggestion of violence to Judge Swayne about that, and the very fact that he has lived in that State so long in his lawless career is a refutation of the suggestion that he is in any danger in the State of Florida. He is as safe in that State as he would be in the State of Maine.

And yet, sir, we are the victims of his unjudicial career and you are not. And if I wanted to couple a large matter with a small one—small by comparison, large as I deem this matter to be—I would say, varying the language, as Mr. Henry said:

Cæsar had his Brutus; Charles the First, his Cromwell;

And should some one venture to suggest that it is treason, I would say:

And Charles Swayne may profit by their example.

Now, sir, if I wished to descend from the grand and the sublime to the ridiculous, for it is almost that to couple these two remarks and these two proceedings, I could say that. I will say that there was never anything in my mind to suggest any violence to Judge Swayne. It is foreign to my nature; it is foreign to my State; and in proof of that I point to the fact that he has lived secure in that State, with perfect immunity, for many years, despite the fact that this House has made, as a basis in part of his impeachment, his cruel, his outrageous, and his vindictive treatment of the citizens of Florida. I hope that will satisfy the gentleman. [Applause on the Democratic side.]

Mr. LITTLEFIELD. I say it satisfies me; but I will go further and say that it grieves me, and I profoundly regret that a Member of the House treats the incitement to assassination and murder in the public prints as a trivial proposition and justifies it upon this floor. I say I profoundly regret it. I shall not characterize it, I shall not go so far as to suggest even that it may indicate——

Mr. ROBINSON of Arkansas. Will the gentleman yield for a question?

Mr. LITTLEFIELD. Yes.

Mr. ROBINSON of Arkansas. Do you assert, in view of the statement made by the gentleman from Florida [Mr. Lamar], that he justifies assassination? Do you make that statement?

Mr. LITTLEFIELD. I say this: We all understand the English language, and I suppose the people of Florida, for whose benefit I infer this interview was given and published in Florida, can read the English language and understand its purport; and I protest here and now—I will tell you what I am thinking of—I protest here and now



against the suggestion that any language that is put in the public print and read by the common people that urges assassination or is an incitement to murder is trivial in its character.

Mr. LAMAR of Florida. May I interrupt the gentleman a moment?

Mr. LITTLEFIELD. Yes; certainly.

Mr. LAMAR of Florida. I would think that the——

Mr. LITTLEFIELD. Let me go a little bit further. I will concede that the gentleman in his place in this House reiterates the language that means that, and then says here that he did not mean it——

Mr. LAMAR of Florida. The gentleman from Maine, I will not say intentionally, but certainly almost blindly, misapprehends what I said upon the floor of this House. What I said had no relation to the question whether crime was trivial. That was not the way in which I used the word trivial. I said it was almost trivial to compare the impeachment of Judge Swayne and the language that I used toward him, not which I used for that publication, but which I said to the reporter that I would use on the floor of this House from my place—I said that was almost trivial compared with the momentous question concerning which the other language was used.

Mr. LITTLEFIELD. Whether the comparison of the impeachment of Judge Swayne——

Mr. LAMAR of Florida. Let me finish what I am saying.

Mr. LITTLEFIELD. Yes; go ahead.

Mr. LAMAR. I say this, and I hope the gentleman will not misunderstand me. I am willing to have him take my language and debate it fairly, but in the use of my language I trust that he will not construe it, impute the meaning to it, or in any way suggest that my language was intended to encourage any violence toward Judge Swayne, because if he did—I will not impute it to the gentleman now, but I say if he did, or if any other Member on the floor of this House did—I would denounce it as a malicious falsehood, because my language was not susceptible of that construction.

Mr. LITTLEFIELD. The gentleman's denunciation disturbs nobody after the exhibition he has made. So far as that is concerned, I will simply say this, if the gentleman thinks this statement can be sustained and will receive credit with intelligent people, I will concede that when he uses this language, which he has now confirmed——

I am going to tell you the story of Gesler and William Tell, and point to the scene in that solitary bathroom in Paris where Charlotte Corday found her victim——

I will concede that he well says that he desires to be understood, and that I so understand him, that he did not intend to encourage assassination or to incite murder; but I will at the same time say that unfortunately for him—I am assuming that he is entirely sincere, but I will at the same time say—that the ordinary citizen of the United States, I am sorry to say, would so construe it; and it is for that reason that the language does great violence to the character of the distinguished gentleman from Florida. Now, I hope in the further discussion of this matter——

Mr. GAINES of Tennessee. Will the gentleman yield to me for a question?

Mr. LITTLEFIELD. No; I——

Mr. GAINES of Tennessee. I wanted to ask the gentleman if this matter that he has read is in the record in this case?

Mr. LITTLEFIELD. Have I said that it was?

Mr. GAINES of Tennessee. Then why does not the gentleman try it on its merits and not try to drag in a wrangle by outside parties?

Mr. LITTLEFIELD. Is the gentleman from Tennessee disturbed?

Mr. GAINES of Tennessee. I have good reason to be disturbed. The gentleman, the other day, was kicking because some Member went outside of the record.

Mr. LITTLEFIELD. There is no telling what you will reach when you bore deep enough. [Laughter.]

Mr. GAINES of Tennessee. The gentleman from Maine has charged the gentleman from Pennsylvania with bringing in unjust suspicions outside of the testimony.

Mr. LITTLEFIELD. Is the gentleman from Tennessee disturbed?

Mr. GAINES of Tennessee. I am disturbed in my confidence in the gentleman's fairmindedness. [Laughter.] I esteem the fairmindedness of the gentleman very much.

Mr. LITTLEFIELD. I appreciate the good opinion of the gentleman from Tennessee, and I hope that I may have it hereafter.

Mr. GAINES of Tennessee. The gentleman will have to improve very much. [Laughter.]

Mr. LITTLEFIELD. That furnishes, of course, for me a very high ideal to attain, but I will do the best I can. [Laughter.] Now, Mr. Speaker, I call attention simply to some things that have been relied upon thus far in the discussion that do not now appear in this case. There are something like five charges. There is the charge in relation to the false certificate; there is a charge in relation to the private car; there is the Belden case and the Davis case and the O'Neal case.

When we started in this investigation, and when the committee made its report, there was what is known as "the Hoskins case." Nearly one-third of this case, as now printed, related to the Hoskins case. That the gentleman from Pennsylvania relied upon in his report, and when he came to make his final speech in support of the resolution of impeachment he again relied upon it. There never was, in the beginning, any more than there is now, any evidence to sustain the allegations in relation to the Hoskins case, and yet the majority of the committee used this language in their report:

The whole disgraceful perversion of law and justice was made possible by the complaisancy, stupidity, or worse, of Judge Swayne, who lent himself to a conspiracy to ruin an honest man by aiding the conspirators in every way in his power.

Now, I submit that that is a very grave assertion.

If the record in this case sustains it this is one of the most serious charges made against Judge Swayne. We have the committee coming here to-day without reporting any articles on that charge made in the report. I say there is no evidence now, and that there never was any evidence, that justified the assertion by the committee, and I rely upon the statement of the gentleman from Pennsylvania for the proof of that assertion.

On November 28 the distinguished gentleman from Pennsylvania, during the hearings, when they were taking the additional testimony, used this language in connection with that charge:

Mr. PALMER. There was no allegation that Judge Swayne knew anything about this alleged conspiracy between Calhoun, Boone, and Tunison at all. There is no testimony of that kind and no evidence based on it.

He stated, on November 28, that there was no foundation for the charge, that there was no testimony connecting Judge Swayne with it, and yet when the impeachment resolution was pending before this House, about two weeks later, the gentleman from Pennsylvania used the same language:

The whole disgraceful perversion of law and justice was made possible by the complaisancy, stupidity, or worse, of Judge Swayne, who lent himself to a conspiracy to ruin an honest man by aiding the conspirators in every way in his power.

Now, it does not seem to me that it was proper, right, or fair for a majority of the committee to insist upon a charge that must have been known to be without foundation for the purpose of securing the passage by the House of the resolution of impeachment, a charge that was admitted by the chairman of the committee to be without foundation before his speech in support of that resolution was made upon the floor.

I think the Members of this House, if they can, should divest their minds of all of the evidence in this case involved in the Hoskins case, either in the record or in the suggestion just made by my distinguished friend, the gentleman from Pennsylvania [Mr. Palmer], this afternoon, in which he referred to the Hoskins contempt case as a reason why Judge Swayne should be prejudiced in the estimation of the Members of the House, because neither of these cases, according to the concession of my distinguished friend, ever were or now are sustained by the evidence in this record. I do not know why they were insisted upon on the 13th of December, when this statement was made by my distinguished friend on the 28th day of November. But they were. I desire to call the attention of the House to the fact that that may be one of the illustrations of the use of propositions here and evidence here not germane to pending articles for the purpose of inflaming the passions and poisoning the minds of Members of the House against the man who stands before them, entitled at their hands to fair consideration.

#### FALSE CERTIFICATES.

The first charge that we find in these articles reported by the committee is the charge relating to the false certificates. I shall urge no man either to vote for or against that charge. I call attention to this significant fact, that that charge now appears first in the list of articles. I believe that the order was changed from last to first for a purpose. Heretofore in the discussion, when the resolution of impeachment was being urged, the false certificate was the last charge, and until these articles were reported to the House the other day it still remained the last charge; but the chairman at the last meeting of the committee to prepare articles was given the privilege of arranging the order to suit himself, and when he arranged the order he made the false-certificate charge the first and not the last in the list. My opinion is, Mr. Speaker, that it was made first because, I think, my distinguished friend knows that many of us on the committee never will vote for any of the other articles, and he hopes that we may vote for this article. I believe that it is made or attempted to be made the vehicle of carrying through some of the other charges and sustaining them as articles of impeachment.

Now, whether under these circumstances, although as the case stood when we acted upon the resolution of impeachment I voted for impeachment upon that ground, when I feel that this article is being used for that purpose—which, it seems to me, is a sinister purpose—I shall feel it my duty to still vote for that article, I reserve for future consideration, so far as I am concerned, especially in view of the fact that we all know, notwithstanding the statement of my distinguished friend, or all feel morally certain, that many honorable and high-minded judges have construed the law in this respect as it has been construed by Judge Swayne. Facts tending to establish that have been made public since adopting the resolution of impeachment. Moreover, the discussion may develop facts that will compel a change of opinion on this article.

Further, although, as that case was presented to the committee and as it was before the House when we acted upon it before, in my judgment it presented a case that would justify impeachment, we all know that when it reaches the Senate of the United States, at that time it will be open to Judge Swayne, in response to that charge, to give his reasons and make his answer thereto. And I suppose many Members of this House feel as I feel, that the probabilities all are that when those reasons are given the Senate of the United States will not be satisfied beyond a reasonable doubt. Now, owing to these considerations, and the fact that in my judgment this article is made the vehicle for the purpose of inducing votes for other propositions, I say I may conclude when we reach that to vote even against this article. I am not going to urge any man to vote for this article in relation to the false certificate, nor do I urge any man to vote against it, but I shall simply take into consideration the facts as they exist at the time and exercise my own judgment.

#### USING PRIVATE CAR.

Mr. Speaker, the next charge is the one relating to the private car, and that involves two counts or two articles. Now, what is the private-car incident? It is simply this: The California incident occurred first in point of time, and of that I shall first speak. The California incident is that of the private car of a railroad in the hands of a receiver appointed by him was used him in traveling to the Pacific coast and back, and that upon that car there was a porter in the employ of that railroad company. Now, that is the proposition, and that is all there is to it. There is no question but that was, to that extent, at the expense of this railroad company. The suggestion made by my distinguished friend, the gentleman from Pennsylvania [Mr. Palmer], inadvertently, I hope, that the trip to Guyencourt, Del., for instance, or the trip to the Pacific coast, if you please, are charged up to this railroad to the amount of \$500, must have been an inadvertence, because there is not a syllable of testimony in this case, there is not a line in this record, to establish any such fact.

Mr. PALMER. I beg your pardon; I did not say any such thing.

Mr. LITTLEFIELD. I beg the gentleman's pardon; I made a note of what he said, and I do not propose to misquote him.

Mr. PALMER. I said this, that if the trip had been taken by a private person it would have amounted to three, four, or five hundred dollars.

Mr. LITTLEFIELD. I thank the gentleman; I misunderstood him if that is the fact. There is no evidence in this case to show that this expense per se—

Mr. PALMER. You will excuse me; I understand the case we have on trial here is Judge Swayne; I am not being tried, as I understand it.

Mr. LITTLEFIELD. I suppose in order for me to develop this case it will be necessary to call attention to the report of the committee and that I will be allowed to call attention to some things the distinguished gentleman has said. Can it be intimated that the gentleman who is prosecuting these charges can stand here and state what this record shows and when I attempt to simply show what it does not show I can not call attention to that fact? Is that to be suggested? If it is, I might as well take my seat now.

Mr. PALMER. You said in the beginning that if you made a mistake you would be obliged if some one would call you attention to it.

Mr. LITTLEFIELD. I thank you.

Mr. PALMER. And I called your attention to a statement which was not made in the record and which I did not make.

Mr. LITTLEFIELD. I understand the suggestion; I so understood the gentleman.

Mr. PALMER. Then peace reigns again.

Mr. LITTLEFIELD. Certainly; and it is not the peace of Warsaw that results in death. Peace reigns. I refer now to this extract from the allegation of the article relating to the private car: "And was provided with a conductor or porter at the cost and expense of said railroad company, and with transportation over connecting lines." Now, the gentleman well knows, and the record shows it, that this car traveled upon a pass: that it did not cost the Florida Railroad a cent. He further fully well understands from his familiarity with railroad matters that the Florida Railroad would have transported cars of other companies precisely the same as though Judge Swayne had not been transported in this car, and it is puerile to say in this proceeding that that transportation was in any sense at the expense of this company.

Mr. OLMSTED. Mr. Speaker, will the gentleman permit?

Mr. LITTLEFIELD. Certainly.

Mr. OLMSTED. This is a matter which seems to me to be of some importance. While I do not concede it to be in bad taste, though it may be, for a judge to ride on a private car, but not an indictable offense, here is this proposition involved in this charge that the expenses of this judge on that car were passed upon by himself as judge and allowed to the receiver as a proper expense of the receiver, and I find on page 595 that the car was provisioned at the expense of the receiver, and presumably that the cost of provisioning that car and stocking it—

Mr. COCKRAN of New York. What page are you reading from?

Mr. OLMSTED. Page 595—that the cost of provisioning this car for the judge and his friends was paid out of the receivership fund and presumably passed upon and approved by the judge who enjoyed the result of such expense. Now, that is the reason I would like for you—

Mr. LITTLEFIELD. I would like to say this: The gentleman is entirely correct. I have no question but the provisioning of that car



from Guyencourt, Del., back to Florida, with the service of the porter and conductor, was paid by the receiver, but there is no evidence in this case that would sustain the proposition that the judge approved these items per se.

Mr. BOWIE. Will the gentleman allow me a question?

Mr. LITTLEFIELD. I am going to quote the testimony upon that point, and if the gentleman will defer his question until then.

A MEMBER. What page?

Mr. LITTLEFIELD. Page 516. Now, the allegation of the charge is, "The said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditures as a part of the necessary expenses of operating said road." Now, I may be wrong about that, but it seems to me that the charge embraces the proposition that Judge Swayne approved these specific expenses. That was the suggestion the other day in the debate. I do not know that the gentleman intended to be understood that way, but that is the way I understand the language. Now, I will read all there is in this case on this point, and I will read from page 516. This is the testimony of Mr. Axtell, attorney for the road:

Q. Who paid for the provisions of this car when they went to Guyencourt, Del., to bring Judge Swayne down to Jacksonville?—A. I think the receiver did.

Q. Who employed the men—the conductor and porter who went on the car?—

A. They were in his employ.

Q. Whose employ?—A. The receiver's employ.

Q. Then the railroad company paid the expense of that trip, did they not?—

A. Yes, sir; the receiver did.

Q. He did not pay it out of his own pocket, did he?—A. No, sir; I do not think so. I never heard it intimated that he did.

Q. It was part of the duty of the court to pass on the receiver's accounts, was it not?—A. Yes, sir.

Q. And if he made an expenditure of that kind the court would naturally pass upon it, would he not?—A. The court would pass upon all his expenditures, that among them; yes, sir.

I have no question but that when the receiver returned his account he charged the whole month's pay for this porter and the whole month's pay for the conductor, and I have no doubt that the provisions may have gone into the provision bill. But there has not yet been produced any evidence or any suggestion of evidence that these items as items were ever approved by Judge Swayne.

Mr. BOWIE. I desire to ask the gentleman from Maine [Mr. Littlefield] if the real gravamen of this particular charge is that in accepting courtesy, or whatever you choose to term it, from the receiver, all of whose accounts he had passed upon, those that were disputed as well as those that were undisputed, it did not, at least, imply some sort of an obligation?

Mr. LITTLEFIELD. That is true. That is a very proper suggestion, and I will say this. There is not a syllable in this record, there is not a line of testimony, there is not a hint from any witness—and if I overstate this I would thank any gentleman to call my attention to it from the record—there is not a syllable of testimony that Judge Swayne's action in any respect was influenced in any way or attempted to be influenced by this favor extended to him by the receiver. If there is any such evidence I have overlooked it, and I would thank anybody to call my attention to it before I get through, inasmuch as I would be very glad to correct it.

Mr. STANLEY. Is not that exactly the defense that Lord Bacon made when accused of accepting improper courtesies?

Mr. LITTLEFIELD. Judge Bacon's offense was a crime per se. He accepted the bribe. There is no pretense that this was in any sense a bribe. There is absolutely no parallel between the cases. I think that Judge Swayne ought not to have used the car. I do not think that any judge under those circumstances should have used it. Of course, it may have been that if this car was not used by him it would probably have been lying on the siding. But that does not make it a proper thing. This charge is 11 years old. It existed in 1893. It is stale.

Mr. COOPER of Wisconsin. I would like to ask the gentleman from Maine [Mr. Littlefield] a question.

Mr. LITTLEFIELD. Certainly.

Mr. COOPER of Wisconsin. The principle involved here seems to be embodied in this question and the answer to it. The increase in the expenses of the receiver lessens the dividends of the creditor, and Judge Swayne said he has a right to increase the expenses of the receiver by the amount of food and edibles eaten and used by his wife's sister, her husband, and his wife and himself, and to that extent lessen the dividends of the company, and he had the right to do it as a matter of law. Does the gentleman sustain that proposition?

Mr. LITTLEFIELD. Judge Swayne did not so state the law. That is the proposition of the gentleman from Pennsylvania [Mr. Palmer]. If he will refer to the record he will find what Judge Swayne did say.

Here is Judge Swayne's last word in the additional testimony before the committee. The judge says in his last statement, when asked:

And you fancied you had the right to use the property of any of the railroads that were in the hands of the court whenever you pleased—

By the way, this is Mr. Palmer's cross-examination, my friend for the prosecution, perfectly legitimate and proper.

And you fancied you had the right to use the property of any of the railroads that were in the hands of the court whenever you pleased without rendering any compensation to the railroad for it? (596)

Now, that meets your precise question. Judge Swayne answered:

I would not say so.

Of course, I know that my friend says that he did not say that, but this is the record.

Mr. PALMER. Will the gentleman say what he did use the car for?

Mr. LITTLEFIELD. I have just read.

Mr. PALMER. Will he say why it was that he did use the car?

Mr. LITTLEFIELD. He said the receiver said that it was as well being used as lying there resting, and under those circumstances he used it. Now, mark you, I do not approve that.

Mr. FOWLER. Now, while the car might be lying there resting, and therefore it might as well be in use, can you say what expense was incurred in the feeding of 8 or 10 people, say, for 2 weeks?

Mr. LITTLEFIELD. Oh, it was not used two weeks—about five days; but that does not make any difference.

Mr. MARSHALL. In order to clear this matter up, is it not a fact that Judge Swayne did pay for the provisions, with the exception of a few wines, on the trip that he made on that car to California?

Mr. LITTLEFIELD. Yes.

Mr. MARSHALL. Including the provisions for their living there?

Mr. LITTLEFIELD. Yes.

Mr. MARSHALL. And this question of the provisions is purely for the trip to Guyencourt, Del.?

Mr. LITTLEFIELD. Yes; for a day and night.

Mr. PALMER. How is that?

Mr. PARKER. Mr. Durfee, who is the receiver, sent the car, and he used the car for a day.

Mr. COCKRAN of New York. I would like to be taken into the confidence of gentlemen exchanging opinions on this most important matter. We can't hear over on this side of the Chamber.

Mr. LITTLEFIELD. Certainly.

Mr. PALMER. He said the provisions for the trip to California were provided with an exception of some liquids.

Mr. LITTLEFIELD. Yes.

Mr. PALMER. And from Guyencourt it consumed about five days?

Mr. LITTLEFIELD. About the trip to Guyencourt there is no definite statement: it may have been two or five days. It is a question of provisions for three or four days, the services of a porter for the same time, and a conductor for the same time. That is the financial item involved, and it would reduce the dividends to the stockholders to the amount of \$15 or \$20, perhaps.

Mr. COCKRAN of New York. How much?

Mr. LITTLEFIELD. Fifteen or twenty dollars.

Mr. COCKRAN of New York. The total expenses of going to Guyencourt?

Mr. LITTLEFIELD. Yes: for provisions, for the conductor, and the porter.

Mr. COCKRAN of New York. And transportation?

Mr. LITTLEFIELD. Why, they did not pay any transportation.

Mr. COCKRAN of New York. Did he fly? [Laughter.]

Mr. LITTLEFIELD. The car was passed.

Mr. COCKRAN of New York. Did he travel without expense over this road?

Mr. LITTLEFIELD. Over the other road.

Mr. COCKRAN of New York. That cost something.

Mr. LITTLEFIELD. Quite likely.

Mr. COCKRAN of New York. And from that road it was passed?

Mr. LITTLEFIELD. Yes: it was.

Mr. COCKRAN of New York. That was an obligation incurred between one railroad and another.

Mr. LITTLEFIELD. Well, it was an obligation in a sense. I suppose, as this was a private car for the receiver and sent to Swayne to Guyencourt by this local road it did not pay for transportation to the other roads, just exactly and on the same basis that such courtesies are extended from one road to another. There is no financial obligation, except the obligation between two railroads as a matter of courtesy. That is all there is to it.

Mr. COCKRAN of New York. Does the gentleman from Maine state that railway companies transport private cars free?

Mr. LITTLEFIELD. Railroad presidents' cars; I have no doubt they do. The evidence shows that they do.

Mr. COCKRAN of New York. Does the gentleman state that as a matter of speculation on his own part, or as a matter of evidence from the record, that the expenses of this trip were about \$20?

Mr. LITTLEFIELD. I state it merely as a matter of estimate on my own part. There is no estimate given by anyone.

Mr. McDERMOTT. Will the gentleman yield for a question?

Mr. LITTLEFIELD. Yes.

Mr. McDERMOTT. I understand that this was about 11 years ago.

Mr. LITTLEFIELD. Yes. I was just going to call your attention to that fact.

Mr. McDERMOTT. Has the receiver been discharged?

Mr. LITTLEFIELD. Do you mean has he been discharged from his duties as receiver?

Mr. McDERMOTT. Yes.

Mr. LITTLEFIELD. I can not tell you about that. I think he has.

Mr. McDERMOTT. If he has been discharged, then his accounts were submitted and audited, and anyone interested in the stock of this road, either as a stockholder or creditor, as a partial owner of the property, had a right to make objection, to file exceptions to the account, and thereupon this judge would have become liable civilly to repay to the company the amount expended. If no objection was made to the account, then the presumption is that the stockholders, the owners of the property, assented to this expenditure. That is naturally so, because when a receiver files his account every stockholder and creditor has a right to file exceptions at the proper time. Every stockholder and creditor stands in the position of one who is interested in an estate, where the administrator or executor files an account. If he does not file exceptions within the statutory period, his mouth is closed and he assents to it. So, if this receiver filed an account showing his expenses for this trip, it is clear that any creditor or stockholder, as a partial owner of the property, would have the right to file an exception. He is presumed to know the legal procedure with reference to the property in which he is interested. If he did not file that exception, then he assented to it, and if he assented to it as the owner of the property, it is in the nature of a ratification upon the part of those who were charged with expenditure because of the action of this judge. The question of the mental attitude of the judge in doing this becomes a matter of indifference, because he is liable in a civil action to the owners of the property for the charge that he put upon the receiver. That is the legal aspect of the question.

Mr. LITTLEFIELD. Now, if gentlemen will excuse me, I will go on.

Mr. McDERMOTT. If the receiver has been discharged and his accounts have been passed, you have one position. If, on the other hand, his accounts have not been audited and he has not been discharged, you have an entirely different position. That is why I asked what the status was.

Mr. LITTLEFIELD. The gentleman is entirely correct about the status.

Mr. COCKRAN of New York. Does the gentleman from Maine accept the doctrine laid down by the gentleman from New Jersey?

Mr. LITTLEFIELD. I have not made that statement, if the gentleman from New York will excuse me.

Mr. COCKRAN of New York. You have not made it?

Mr. LITTLEFIELD. No. The gentleman from New Jersey is entirely capable of taking care of himself.

Mr. COCKRAN of New York. That is very clear.

Mr. LITTLEFIELD. Now, let me go on.

Mr. COCKRAN of New York. I wanted to know if the gentleman from Maine accepts that doctrine, and if we can proceed upon the assumption that the doctrine laid down by the gentleman from New Jersey in this respect is the doctrine that underlies the remarks of the gentleman from Maine.

Mr. LITTLEFIELD. If the gentleman will excuse me, the "gentleman from Maine" will go on and state his position in connection with this question briefly. I will call the attention of the House to this fact, that this charge is 11 years old. As a legal proposition, there is no question about the soundness of the position of the distinguished gentleman from New Jersey, Mr. McDermott. I would agree with him absolutely upon his proposition that under these circumstances, after this lapse of time, it would be an impossibility, of course, to make any recovery of anybody connected with that transaction; but as to the question of moral turpitude involved in the transaction, that is involved in the gentleman's suggestion and is entitled to a great deal of weight, coming from the distinguished gentleman from New Jersey.

I will go a little further and say that these things were not done in a corner. This using of this private car was not a private thing in Florida. It was well known down there in June, 1893, when the trip was made to California. It was well known down there in October, 1893, when the trip was made to Guyencourt, Del.; and although there existed a condition of things down there at that time that led the people to scrutinize passing events more vigorously perhaps than now, there was no attempt at that time to remove Judge Swayne on this charge. In 1893 or 1894 they began the attack upon this judge on account of the political conditions that existed in Florida, as disclosed by him in his testimony, and I do not have to go outside of the record for the purpose of establishing that proposition. They began an attack by legislating him out of his court. They had a Democratic House at that time, in 1893. These charges were well known and circulated all throughout that section, and it was open to the Democratic House then, if they relied upon this proposition as a proper subject of impeachment, to have begun impeachment proceedings against him and removed him from office in that way instead of attempting to remove him indirectly therefrom by changing the boundaries of his district.

The witness Wurts, who was before the committee, a professor in the Yale Law School to-day, discloses all these facts, and states that they were a matter of public notoriety 11 years ago. By the way, let me give you an illustration, or a suggestion of the sort of a man this Prof. Wurts, of the Yale Law School, is, by his own statement. He was a candidate for the position of judge in opposition to Judge Swayne at that time. He, it seems, had an interview with the Attorney General when it came to the question of the appointment of a judge. The Attorney General had this conference with him, according to Prof. Wurts:

My next interview with him was in the Riggs House, when he and I went in to lunch together, and we sat alone at a table. Presently he began to talk to me about questions of law, and he began to put questions evidently for the pur-



pose of testing my knowledge of equity practice, and finally he said, "Well, Mr. Wurts, as I told you, we have decided to appoint you, but you know there have been great election frauds committed down in Florida. The administration proposes to prosecute those men, and we must feel sure that the man whom we appoint will secure the conviction of the men whom we expect to indict." I was completely thrown off my base. I was very much worked up. I answered, "I always thought that the question of guilt or innocence where there was conflicting testimony was for the jury." "Oh," he says, "the judge can control that if he is the right kind of a man. Now," he said, "look down there in Tennessee." I think he said Tennessee, but he mentioned some State. "Now, if Judge So-and-so had not been the proper kind of a man we never would have secured convictions; the department never would have secured convictions. That thing can be done," he says. I said to him, "Mr. Miller, I have not the qualifications that you want for that office"; and he said to me, "I am very sorry."

Wurts went back to Florida, where these rumors had existed in connection with a private car, and he stayed there 10 days. Then he said the people were kotowing to him as the future judge. And then, notwithstanding, if he is to be believed, that the Attorney General had made to him an infamously base proposition, that was an insult to him and a disgrace to the Attorney General, this distinguished professor of a law school proceeded to go back and koto to the Attorney General and see if he couldn't get the appointment even upon these conditions, because he does not suggest any expectation of change therein.

But let me go a little further and say that Attorney General Miller was a witness also; it was not necessary for him to be, for we all know his high character, and he said this:

No such conversation occurred. Of course I can have no recollection if it. It would have been a direct insult to him, and it would have been a direct disgrace to me; and while I can not remember in an affirmative way what was said. I know just as well that I did not say that to him as that I did not say I wanted a consideration from him. It is impossible. I would no more have said that than I would spit in his face.

Now, I do not say that that is the character of all of the witnesses that appear in this record. I do not say that any others——

Mr. GILLET of California. If the gentleman will pardon me, Wurts went back afterwards and admitted that he was mistaken.

Mr. LITTLEFIELD. Yes; he went back afterwards and admitted that he was mistaken, and that is a witness that was projected into this case and is behind this charge in relation to the private car.

Upon these facts, as far as I am concerned, I say this: It was 11 years ago; everybody knew it then, in the line of the suggestion of my friend from New Jersey [Mr. McDermott]; the receiver knew it, the public knew it, the people interested in the railroad and others knew it; and there is no evidence that any man made any objection to that conduct on the part of Judge Swayne connected with that railroad, either as a receiver or as a cestui que trust or as a creditor or stockholder, not the slightest objection or the slightest suggestion that in any way it affected his opinion or action or was intended to affect his opinion or action. So far as I am concerned, I do not think the Senate would say beyond a reasonable doubt that that charge should be sustained, and I shall vote for that reason against that charge.

Mr. COCKRAN of New York. Will the gentleman yield to me?

Mr. LITTLEFIELD. Certainly.

Mr. COCKRAN of New York. I understand the gentleman condemns the immorality of this act?

Mr. LITTLEFIELD. I do.

Mr. COCKRAN of New York. Will the gentleman from Maine, to facilitate the discussion, let us know where judicial immorality becomes impeachable?

Mr. LITTLEFIELD. The gentleman from New York knows that is a physical impossibility; that it is a mental impossibility to draw the line. Now, I simply say this: I do not urge the gentleman to oppose it or to support it. I say that, upon the facts as they exist in this case, I do not propose to sustain the charge. I do not propose to press my opinion upon the gentleman from New York or upon any other gentleman. I simply give the analysis of the facts as they stand.

Mr. COCKRAN of New York. Mr. Speaker, I most respectfully submit to the gentleman, whose views are always of great value to the House and always of great weight with me——

Mr. LITTLEFIELD. I thank the gentleman.

Mr. COCKRAN of New York. That where a course of conduct by a judicial officer is condemned by him, the exact point to which he will extend immunity from impeachment or prosecution ought to be made clear to the House, and the reasons which justify his lenity, so that some of us may perhaps see our way to adopt it.

Mr. LITTLEFIELD. Well, Mr. Speaker, I regret very much, I say frankly to the gentleman from New York, that I am not able to give him that specific line of demarcation. I simply say that on the facts of this case, in connection with those two charges, I do not believe the Senate would be satisfied beyond a reasonable doubt that Judge Swayne is guilty of an impeachable offense. That is as far as I can go with the gentleman.

Next let me call the attention of the House to the charge in relation to nonresidence, and here I wish to say that the record does not disclose all the evidence that is given in this case. Judge Swayne testified before this subcommittee, as I understand, something like two hours, and his testimony would include something like nine or ten thousand words. I am stating this approximately only. I notice that this record publishes about 3,500 words. Now, in that transcript there is only about one-third of it, as I understand, printed. I do not know where the balance is.

Mr. GILLET of California. That is the first testimony.

Mr. LITTLEFIELD. That is the first testimony given before the first hearing. When that transcript was presented to the gentleman from Pennsylvania [Mr. Palmer] the gentleman from Pennsylvania suggested to the gentleman from California [Mr. Gillett] that it was garbled, inadequate, and incorrect. Now, a part of the testimony does not appear in this case.

Mr. PALMER. The gentleman will excuse me, Mr. Speaker, but I will state that the gentleman from California [Mr. Gillett] and the gentleman from Pennsylvania [Mr. Palmer] agreed that that did not justly nor adequately represent what Judge Swayne said.

Mr. LITTLEFIELD. That is true.

Mr. PALMER. It was not in the nature of testimony at all. It was his discourse or speech, whatever it may be called, before the committee, which was inadequately reported by the stenographer, who did not get it down so that it made sense. Therefore we both agreed that it would not do Judge Swayne justice. Very well. Now, that being the state of the facts, at the second hearing before the com-

mittee Judge Swayne came before the committee and alluded to the fact that his prior argument had not been reported and proceeded to deliver a typewritten speech 23 pages long, which made 13 pages of the record, in which he undertook to supply anything that had been omitted.

Mr. LITTLEFIELD. I understand the gentleman to concede now, then, that the statement made before the committee and first printed was an inadequate and imperfect transcript of Judge Swayne's testimony.

Mr. PALMER. Yes; and it was not printed at all, because the gentleman from California [Mr. Gillett] and the gentleman from Pennsylvania [Mr. Palmer] agreed——

Mr. LITTLEFIELD. What part of it was printed?

Mr. PALMER. The testimony that he gave before the committee was printed, but his argument or speech, or whatever it may be called, that was made before the committee was not printed, because it was inadequately reported.

Mr. CHARLES B. LANDIS. Was it reported by one of the regular reporters of the House?

Mr. PALMER. No; by the colored man up in the Judiciary Committee.

Mr. SMITH of Kentucky rose.

Mr. LITTLEFIELD. No; I beg pardon. I must go on.

Mr. PALMER. Subsequently he made a statement in which he undertook to cover the whole case, from the date of his birth in 1842 down to to-day, and I expressly said so.

Mr. LITTLEFIELD. Yes. Just a moment. I desire to call attention now to the fact that the report—I understand the gentleman from Pennsylvania to concede that the statement of Judge Swayne as printed in the first instance before the additional testimony was taken was imperfect and an inadequate presentation of what he said.

Mr. PALMER. No; I do not agree to that. I agree that what was taken down as testimony was adequately and correctly reported, and I agree that the speech he made to us was not adequately reported.

Mr. LITTLEFIELD. The speech was left out?

Mr. PALMER. Certainly; and that subsequently he made the speech over again.

Mr. LITTLEFIELD. Now, one moment. Let me ask the gentleman this: Who edited out of Judge Swayne's statement the quotation from the testimony that appears on page XX of the report of the committee, as follows:

Mr. PALMER. Did not you state it was unnecessary for Hoskins to submit any proof about these books? Does not the record show that?

Judge SWAYNE. There was a witness upon the stand who testified as to Mr. Hoskins's ability to pay his debts.

Mr. PALMER. But what had that to do with the proof submitted by the witness Jennings?

Judge SWAYNE. Well, that requires a further answer. And there was, I believe, some evidence by a man they called Price on this subject, but that man's name was not Price, although he went by that name. He was designated as Price, but his name was really something else, which I do not now recall.

Mr. PALMER. Then you mean to say in substance that you did not have any confidence in that witness?

Judge SWAYNE. I certainly did not.

Mr. PALMER. Well, do you think a judge has the right to take that view of a witness in the administration of justice?

Judge SWAYNE. Yes, sir.

Mr. PALMER. At the time you made that ruling was there any proof that Hoskins had ordered his son to take the books back?

Judge SWAYNE. Well, I wanted to have the books in court when the trial came on or show that they could not be had.

Mr. PALMER. That is just the point; and you refused to hear anything on the point, and would not hear the witness or hear the testimony?

Judge SWAYNE. I did not see how I could.

Mr. PALMER. That is correct, is it?

Judge SWAYNE. Yes, sir.

Now, I have read this case with great care. There is a quotation from the testimony of Judge Swayne that I challenge the gentleman from Pennsylvania to find printed in the record anywhere. It was reported by the gentleman in his report after the first of Swayne's testimony was taken, and I challenge the gentleman now to point this House to the place in that record where that extract from Judge Swayne's testimony appears, the context from which that extract is segregated. I can not find it and I challenge the gentleman to find it. Now, I am going on to another branch of this case. I say this further. I understand Judge Swayne asked the poor privilege of revising his statement made in the first instance. Was he given the privilege of revising it?

Mr. PALMER. He never asked the privilege of the committee.

Mr. LITTLEFIELD. The stenographer so informed me; that is the only authority I have for it.

Mr. PALMER. Oh, the stenographer may have informed you.

Mr. LITTLEFIELD. I will ask the gentleman if he assumed the responsibility of editing the testimony of Judge Swayne?

Mr. PALMER. No, I did not; I reported the testimony as given.

Mr. LITTLEFIELD. Will the gentleman look his records over and tell me where he finds this extract he uses in his report of about twenty lines on page 20 of his report? If he does not find it in his record, somebody did edit out of the record that statement made by Judge Swayne.

Mr. PALMER. I submit this—it is not my record and I have not edited anything out of it, and I resent the imputation. I am not obliged to the gentleman for making any such imputation.

Mr. LITTLEFIELD. I submit the gentleman is chairman of that committee; that he took this testimony, and it was incumbent upon the chairman of that committee to present to this House the testimony taken before the committee in order that it could judge for itself as to what these facts show. Now, I will suspend any time the gentleman can tell me where he can find in his record the testimony containing this extract of Judge Swayne's testimony which he puts into his report, and I submit if it appears that there is a part of that testimony edited out—I do not say for what purpose, I do not make any imputation upon the gentleman—if it appears that it is an incomplete transcript, if it appears that it is only a partial transcript and has been edited by any man, I submit that Judge Swayne should not be convicted upon this charge upon the testimony thus given, and the distinguished gentleman from Pennsylvania and the—

Mr. SHERLEY. Will the gentleman yield for a question?

Mr. LITTLEFIELD. No; I beg the gentleman's pardon, I can not yield now, but if he waits until I conclude this line—

Mr. SHERLEY. Here is a proposition I would like to ask the gentleman upon at this point.

Mr. LITTLEFIELD. I want to finish up my statement first. I submit that the distinguished gentleman from Alabama relies on this previous statement of Judge Swayne as his well-considered statement, and when Judge Swayne made his additional statement carefully prepared if it does not happen to agree with his first statement he intimates that Swayne was guilty of wrongdoing and intentional falsifying in his testimony. I protest against making such a use of what is admitted and demonstrated to be an incomplete statement of Judge Swayne.

Mr. HENRY of Texas. Tell us over here what that statement was.

Mr. LITTLEFIELD. The first statement he made before the committee.

Mr. HENRY of Texas. The first statement is printed.

Mr. LITTLEFIELD. Of course it is printed, and I have shown from the report of the committee that the committee has printed testimony in its report that is edited out of the record.

Mr. HENRY of Texas. Now, read that part presented now.

Mr. LITTLEFIELD. You can find it on page 20 of the report; I will not take time to read it. I will not stop to read it; you will find it on page 20.

[Cries of "Read it!"]

Mr. LITTLEFIELD. I can not stop to read it. That is a statement relating to the Hoskins case appearing in the report, but it does not appear in the record. I do not know who it was, but somebody has edited the record and the transcript of Judge Swayne's statement. That having been done I submit that the only fair statement to be taken by the House in connection with Judge Swayne's residence is the statement that he had an opportunity to revise and carefully make before the committee. That I am going to read from now upon this question of residence.

Mr. SHERLEY. Mr. Speaker——

Mr. LITTLEFIELD. If gentlemen will excuse me until I get through arguing this article I will answer then their questions, but I can not be interrupted all the time.

Mr. SHERLEY. I did not desire at all to be discourteous.

Mr. LITTLEFIELD. I understand it perfectly.

#### HAS JUDGE SWAYNE RESIDED IN HIS DISTRICT?

Now, what are the facts in connection with this question of non-residence? I fully appreciate, and will be very glad to have the gentleman's suggestion, after I finish arguing upon this proposition, and I will pause for that purpose. What are the facts? The facts are that in 1894 this district was changed, leaving St. Augustine out of the district. Up to that time Judge Swayne was a resident of St. Augustine. Now, the only question is, Did Judge Swayne become a resident of the new district with these new boundaries after July, 1894? There is not very much real conflict of testimony when the testimony is carefully considered. I am going to read from Judge Swayne's statement, so you can appreciate the force of it.



I was entirely familiar with the statute requiring the United States district judge to reside in his district, and proceeded at once to comply therewith. I was also well aware that such residence did not necessarily require the presence of either the family or the furniture of the judge to be in the district to make a complete compliance with the law. Many of my friends suggested that the next Congress might change the boundaries of the district back so as to put St. Augustine again in the district, and that I should not move furniture until that was determined. But I at once announced that it was my intention to move my residence to Pensacola, and I then and there made Pensacola my residence. I came to the Escambia Hotel, in Pensacola, Fla., and registered as follows: "Charles Swayne, city," and announced to my friends there repeatedly that I was now a resident of Pensacola.

I asked a friend to have my name entered on the registration list of Escambia County for the purpose of emphasizing that fact. I made Pensacola my home, stopping sometimes at the hotel and sometimes at private boarding houses. My room at Capt. Northrup's was known along in those years as Judge Swayne's room. Some member of my family was often in Pensacola with me at this time. When away from Pensacola I always registered from Pensacola, Fla., and I never at any time had any other home or claimed any other place as my home nor at any time had any intention of so doing. Guyencourt, Del., was then, and is now, owned by my mother, and has been her home for 60 years, furnished with her furniture, the farm rented by her for the past 15 years to tenants, since my father's death. I went again to look for a suitable house in Pensacola for my family, and went with Capt. Northrup and Mr. F. W. Marsh, Capt. Cary, and others to inspect various proposed locations. I can recall at present a few of the different locations that I then considered. There was the Wright house and the house now occupied by Dr. Anderson, both on West Gregory Street; and later on, three vacant lots were considered, and Mr. William Fisher and others were negotiated with about building me a suitable residence.

I made three efforts to rent or purchase the Chiply property, at the corner of Belmont and Balyen Streets, from Capt. Cary, then agent therefor. In 1897 I just missed purchasing the Piaggio property, it having been taken by Mr. Guttman two days previous. During the winters of 1894 and 1895 and 1896 my family remained in that house at St. Augustine, after which time it was rented furnished to others. In the winter of 1897 and 1898 I was designated to sit on the circuit court of appeals in New Orleans, but the prevalence of yellow fever in that city prevented the court from convening until January, 1898. My family were with me there. On July 9, 1898, we all sailed for Europe, where my family remained until July, 1899. I returned in September, 1898, and came, as usual, to hold my court for the northern district of Florida and elsewhere as designated by the judges of the circuit court. I at once began again to look for a suitable home for my family at a figure I thought reasonable, and in the autumn of 1900 rented from P. C. Watson & Co. the Simmons cottage, corner of Belmont and Barcelona Streets, and moved in at once with my family and furniture, and resided there until October 1, 1903, when I moved into the property at No. 13 West De la Rua Street, that was purchased from Judge A. C. Blount the May previous.

These two houses were used and occupied by myself and family as my home, and is the only one I had anywhere from the autumn of 1900 to the present hour. The periods of absence therefrom were when I was not called by designation to hold courts in other districts by one of the circuit judges or by summer vacations, which I spent with my aged mother at Guyencourt, Del. Summers in Florida are not only very hot, but long and debilitating, and many persons have to go North to avoid the bad effects thereof. It is a common thing for other judges to go North for the summer. My physicians advised me against remaining in Florida during the long hot summers. The record of my court shows that there was nothing for the court to do. On leaving the district I always left word with the clerk of the court where I could be found, and went back whenever requested.

It may be true that I have at times referred to Guyencourt, my mother's home, as "my own home," and spoke of going there for the summer, but never with any idea or intention of announcing that it was my home or residence, for I never had any intention at any time to change my domicile from Florida, where I came to reside permanently in February, 1885, and I have never done anything nor used any expression that would indicate that I did.

Notice his statement in relation to Guyencourt:

It may be true that I have at times referred to Guyencourt, my mother's home, as "my own home," and spoke of going there for the summer, but never with any idea or intention of announcing it was my home or residence.

The facts are simply as stated by the judge. There is no serious controversy about it. He never paid any tax in Florida; he never paid any tax anywhere else; he never voted in Florida; he never voted anywhere else. After he broke up his home in St. Augustine he never had his furniture in any other place for the purpose of furnishing a home for himself and family until it was moved into the Simmons house in 1900. He never had any home in Guyencourt, Del. A gentleman by the name of Laney, one of the counsel employed in the case, and employed by O'Neal, went to Guyencourt, Del., for the purpose of ascertaining whether he was a resident there. He came back and gave to the committee the names of at least four men who were his neighbors, none of whom appeared to contradict the statement of the judge. When he was in Guyencourt he was simply there for his summer home, and it was where he passed his summer vacation. There is one witness that says the judge referred to Guyencourt, Del., as his home, and I will call your attention now to his testimony on page 37:

Q. I will ask you whether you know if Judge Swayne had a residence in this district before he acquired a residence here?—A. He resided in St. Augustine.

Q. Do you know of his acquiring any other residence?—A. I think after the redistricting that whenever Judge Swayne was in the State he stayed here.

Q. You don't know of his acquiring any residence except here?—A. I do not.

Q. You say you don't know of his acquiring any other residence. Do you mean in this State or outside?—A. I don't know of his acquiring any residence of my own knowledge.

Now, here comes testimony as to declaration of intent as to what he calls his home. Note the significance of it:

Q. Didn't you say you heard him say he had acquired a residence in Guyencourt, Del.?—A. I didn't say he acquired a residence. I say I heard him say he had a home in Guyencourt, Del.

Q. Repeat what he said?—A. I have been on pretty friendly terms with Judge Swayne. Have had conversations with him. I heard him talk about his place in Guyencourt. I don't know as he called it home or residence—he called it his place. He spoke about his horses, etc. I don't know whether he considered it his summer home or residence, or what.

Q. Was it before or after the redistricting of the State that you have had these conversations?—A. Possibly before and after.

That is all the effect that testimony has. The same declaration made in reference to Guyencourt, Del., when he was in St. Augustine was made later on after the boundaries of the district had been changed. This shows clearly that he did not at any time refer to Guyencourt as his place of residence, and his declarations are in no sense in conflict with his testimony. Northup says he spoke of homestead as being at Guyencourt, clearly meaning his family homestead.

It is not entirely correct—that is, it does not leave the right impression—to say that Judge Swayne simply held court in Florida on the average of about 60 days in a year—and that is all the time he was in Florida—and thus narrow the time during which he resided in the district—because from 1896, and in 1897, 1898, and 1899, and clear way down to 1903, Judge Swayne was holding court, not only in Florida, but he was holding court in Dallas, Waco, and Fort Worth, Tex.; in Birmingham, Ala., and New Orleans, under the

order and direction of the court which had the power to send him there. And whenever he held court in those places, under those circumstances, it was entirely consistent with the existence of his residence in Florida, and is fairly to be taken into account when you determine how much service he rendered as judge, and the place where it was rendered, as bearing upon the question as to where he resided.

Now, I will file, that it may be put into the Record, an itemized statement showing just exactly where he was. In order to do this, of course, I have had to get a certificate from the clerk of the court in Florida, that also did not get into the Record. The Clerk tells me he put it in, but it did not get in. At least, it did not get printed. I do not know where the original is, but I will put this in the Record, so that you may have the advantage of it:

In the Circuit Court of the United States, Northern District of Florida.

I, F. W. Marsh, clerk of said court, hereby certify that I have examined the minutes of said court, and find that on the following-enumerated days the court aforesaid was opened for business, the Hon. Charles Swayne, district judge, present and presiding, to wit:

*At Pensacola.*

	Days.
1896. Jan. 18, June 29 to July 1, without jury-----	4
Apr. 7 to 25 and Nov. 4 to 13, jury present-----	25
1897. Jan. 9 and July 3, without jury-----	2
Apr. 6 to 16 and Dec. 14 to 21, jury present-----	17
1898. May 28 to June 4, Nov. 15 to 19, and Dec. 9 to 17, inclusive, jury present-----	20
1899. Jan. 27-28, Mar. 20 to 25, Oct. 5-8, without jury-----	10
May 1 to 6, May 15 to 20, Nov. 13 to 18, Nov. 29 to Dec. 2, jury present-----	22
1900. Jan. 22 to 26, July 4, without jury-----	6
May 8 to 19, Nov. 8 to 17, Nov. 23 to Dec. 1, jury present-----	23
1901. Jan. 2 to 4, Jan. 22, 26, 30, Feb. 5 to 7, Feb. 13, 14-20, 27 to Mar. 4, Mar. 18, 20, 25, 27, 30, Apr. 1 to 6, Nov. 23 to Dec. 31, without jury--	69
Mar. 5 to 14, Apr. 26 to June 19, Nov. 5 to 16, jury present-----	31
1902. Jan. 1 to Mar. 10, Mar. 31 to Apr. 2, June 16 to 18, Dec. 2 to 16, without jury-----	59
Mar. 11 to 22, Nov. 7 to Dec. 1, jury present-----	33
1903. Mar. 2, Mar. 16, Apr. 15, May 2, May 25 to June 1, Oct. 2 to 24, Nov. 11 to Dec. 31, without jury-----	88
May 4 to 16, Oct. 26 to Nov. 10, jury present-----	26

*At Tallahassee.*

1896. May 12 to 16, jury present; Nov. 2, not present-----	6
1897. Jan. 9, no jury; June 6 to 8, jury present-----	4
1898. June 6 to 8, jury present-----	3
1899. May 9 to 13, Nov. 20 to 24, Dec. 4, 5, jury present-----	12
1900. May 22, 23, Nov. 19 to 22, jury present-----	6
1901. Nov. 18 to 22, jury present-----	5
1902. Mar. 24 to 27, jury present-----	4
1903. May 18 to 28, Nov. 23 to 28, jury present-----	16

Total for eight years-----	494
Of which jury were present on-----	256
And no jury present on-----	238

An average of about 62 days per year. From the above dates all deductions were made for Sundays and legal holidays.

Witness my hand and seal of said court at the city of Pensacola, in said district, this 31st day of December, A. D. 1903.

[SEAL.]

F. W. MARSH, Clerk.

I, F. W. Marsh, clerk of the District Court of the United States in and for the Northern District of Florida, hereby certify that on the days and dates above given the said court was opened for business, the said district judge present and presiding, as certified in the circuit court aforesaid.

Witness my hand and the seal of said court at the city of Pensacola, this 31st day of December, A. D. 1903.

[SEAL.]

F. W. MARSH, *Clerk.*

Now, let me give you an illustration.

Mr. BOWIE. If it does not interrupt the gentleman, I want to ask him one question: Does he claim that Judge Swayne's testimony on page 20 is not to be found in the record?

Mr. LITTLEFIELD. Yes.

Mr. BOWIE. Do you claim that he did not testify as stated in the report?

Mr. LITTLEFIELD. Oh, I presume he did. I do not know anything about it. I make no charges against the distinguished gentleman. It was through inadvertence or in some other way. The whole transcript is simply not here, and it is not fair and it is not right to hold Judge Swayne on the strength of a transcript that is not complete. It would not be done anywhere else.

Mr. PALMER. You say you do not know whether that testimony was given. Do you not know that Mr. Gillett told you that it was given?

Mr. LITTLEFIELD. You mean this testimony?

Mr. PALMER. On page 20.

Mr. LITTLEFIELD. Well, so far as that is concerned I do not know whether it was given or not.

Mr. PALMER. Did you not inquire of Mr. Gillett, and did he not tell you that it was?

Mr. LITTLEFIELD. I do not know whether I inquired. [To Mr. Gillett of California:] Did I inquire of you?

Mr. GILLETT of California. Yes, sir.

Mr. PALMER. He heard it.

Mr. LITTLEFIELD. That may be true; I was not present, and did not hear it.

Mr. PALMER. Then what are you talking about?

Mr. LITTLEFIELD. What am I talking about? The gentleman evidently does not appreciate the situation. I do not know whether he appreciates the significance of a complete transcript as compared with an emasculated transcript.

Mr. SHERLEY. Will the gentleman permit me to interrupt him?

Mr. LITTLEFIELD. Certainly.

Mr. SHERLEY. Do I understand the gentleman from Maine to tell the House that we are called upon to pass judgment on a case of this importance on an incomplete record? Now, the gentleman has been a member of both committees having in charge this investigation, and I think it is due that he should state to the House when he got the information that the record here is not complete, and why steps were not taken by him to have it completed.

Mr. LITTLEFIELD. I got that after the last debate; and I went to the stenographer to get him to make a transcript.

Mr. SHERLEY. How long ago?

Mr. LITTLEFIELD. Just before the vacation.

Mr. SHERLEY. What step has the gentleman taken to bring into this House a complete record?

Mr. LITTLEFIELD. "The gentleman" went to the stenographer and asked him if he had a transcript of his notes. He said he had not. I asked him if he had the original notes, and he told me that the notes had got lost in the shuffle.

Mr. SHERLEY. If the gentleman can not give this House any knowledge so that they can get a transcript, having to determine a question involving the highest principles on a mutilated record, if your statement be true, this House has no business in proceeding with this case now.

Mr. LITTLEFIELD. "The gentleman" has not undertaken until now to discuss any of these charges except that charge in relation to the question of false certificates. "The gentleman" only learned from the stenographer that his notes were not to be had just a little before the vacation.

Mr. PARKER. What vacation?

Mr. LITTLEFIELD. The last vacation; the Christmas vacation. This is the first opportunity I have had since of saying anything about it. I hope I make that plain to the gentleman.

Now, let me go a little further. I would like to call the attention of the House to this fact: While I was at home during the vacation for the purpose of examining this case in detail and making preparations to give to the House the benefit of this record, I first learned of this important certificate of Mr. Marsh, the clerk of Judge Swayne's court at Pensacola. I then procured it from Mr. Marsh. An analysis of the certificates from the various clerks shows Judge Swayne holding court as follows:

*Swayne's statement—Courts held by Judge Swayne.*

1896.

Dallas, Tex., Jan. 13 to Mar. 24	70	---
Pensacola, Fla., Jan. 18	1	---
Graham, Tex., Mar. 1	1	---
Pensacola, Fla., Apr. 7 to 25	17	---
Waco, Tex., Apr. 27 to May 16	18	---
Tallahassee, Fla., May 12 to 16	5	---
Dallas, Tex., May 18 to June 27	40	---
Pensacola, Fla.:		
June 29 and 30	2	---
July 1	1	---
Tallahassee, Fla., Nov. 2	1	---
Pensacola, Fla., Nov. 5 to 13	8	---
Waco, Tex., Nov. 18 to 30; Dec. 1 to 19	28	---
	157	35
Estimated time for travel	15	12
	172	47
Total number of days	219	---

Months not holding, August, September, and October.

1897.

Pensacola, Fla., Jan. 9	1	---
Dallas, Tex., Jan. 11 to Feb. 27	51	---
Fort Worth, Tex., Mar. 1 to Mar. 13	12	---
Pensacola, Fla., Apr. 6 to 16	10	---
Waco, Tex., Apr. 20 to 30; May 1 to 15	25	---
Dallas, Tex., May 17 to July 1	44	---



# IMPEACHMENT OF JUDGE CHARLES SWAYNE.

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Tallahassee, Fla., June 6 to 8-----	8	
Pensacola, Fla.:		
July 3-----	1	
Dec. 14 to 21-----	7	
	132	22
Estimated time for travel-----	12	12
	144	34
Total number of days-----	178	
Months not holding court, August, September, October, and November.		

1898.

New Orleans, La.:		
Jan. 3 to 31-----	28	
Feb. 1 to 28-----	27	
Mar. 2 to 31-----	29	
Apr. 1 to 30-----	29	
May 2 to 28-----	26	
Pensacola, Fla.:		
May 28, 30, and 31-----		3
June 1 to 4-----		4
Tallahassee, Fla., June 6, 7, and 8-----		3
Pensacola, Fla., Nov. 15 to 19-----		5
New Orleans, La.:		
Nov. 21 to 30-----	9	
Dec. 1, 2, and 3-----	3	
Dec. 9 and 17-----		8
	151	23
Estimated time for travel-----	21	15
	172	38
Total number of days-----	210	
Months not holding court, July, August, September, and October.		

1899.

Pensacola, Fla., Jan. 27 and 28-----		2
New Orleans, La.:		
Jan. 30 and 31-----	2	
Feb. 1 to 28-----	28	
Mar. 1 to 11-----	11	
Pensacola, Fla., Mar. 20 to 25-----		6
Birmingham, Ala., Apr. 4 to June 5-----	62	
Pensacola, Fla., May 1 to 6-----		6
Tallahassee, Fla., May 9 to 13-----		5
Pensacola, Fla.:		
May 15 to 20-----		6
Oct. 5 and 6-----		2
Huntsville, Ala., Oct. 9 to Nov. 1-----	23	
Pensacola, Fla., Nov. 13 to 18-----		6
Tallahassee, Fla., Nov. 20 to 24-----		5
Pensacola, Fla.:		
Nov. 27 to 29-----		3
Dec. 1 and 2-----		2
Tallahassee, Fla., Dec. 4 and 5-----		2
	128	45
Estimated time for travel-----	18	33
	144	78
Total number of days-----	222	
Months not holding court, July, August, and September.		

## 1900.

Huntsville, Ala., Jan. 7 to 19.....	13	---
Pensacola, Fla.:		
Jan. 22 to 28.....	---	4
May 8 to 19.....	---	11
Tallahassee, Fla., May 22 and 23.....	---	2
New Orleans, La.:		
May 24 to 31.....	7	---
June 1 to 15.....	13	---
Tyler, Tex., June 18 to 28.....	11	---
Pensacola, Fla., July 4.....	---	---
Birmingham, Ala., Sept. 3 to Oct. 6.....	33	---
Pensacola, Fla., Nov. 8 to 17.....	---	9
Tallahassee, Fla., Nov. 19 to 22.....	---	4
Pensacola, Fla., Nov. 23 to Dec. 1.....	---	7
Tyler, Tex., Dec. 3 to 29.....	27	---
	104	37
Estimated time for travel.....	18	18
	122	55
Total number of days.....	177	---
Months not holding court, February, March, August, and October.		

## 1901.

Pensacola, Fla., Jan. 2-4, 22, 26-30, Feb. 5-7-13-14, 20, 27 to Mar. 4, 5-14, 18-20-28-30, Apr. 1-6, 26 to June 19.....	---	---
Birmingham, Ala., Sept. 2 to 16.....	15	---
Pensacola, Fla., Nov. 5 to 16.....	---	---
Tallahassee, Fla., Nov. 18 to 22.....	---	---
Pensacola, Fla., Nov. 23 to 30, Dec. 2 to 31.....	---	---
	15	105
Estimated time for travel.....	---	25
	---	130
Total number of days.....	145	---
Not holding May, July, August, and October.		

## 1902.

Pensacola, Fla., Jan. 1, Feb., Mar. 10-11-22.....	---	---
Tallahassee, Fla., Mar. 24-27.....	---	---
Pensacola, Fla., Mar. 31 to Apr. 2, June 16 to 18, Nov. 7-9, Dec. 1-2, 16.....	---	---
	96	---
Estimated time for travel.....	18	---
	114	---
Total number of days.....	114	---
Not holding court May, July, August, September, and October.		

## 1903.

Tyler, Tex., Jan. 12 to Feb. 16.....	35	---
Pensacola, Fla., Mar. 2 to 16, Apr. 15, May 2, 30.....	---	---
Tallahassee, Fla., May 18 to 28.....	---	---
Pensacola, Fla., June 1, Oct. 2 to 31, Nov. 2 to 30.....	---	---

Tallahassee, Fla., Nov. 23 to 28-----	-----	-----
Pensacola, Fla., Dec. 1 to 31-----	-----	113
	35	113
Estimated time for travel-----	3	16
	38	129
Total number of days-----	167	-----

Not holding court July, August, and September.

Average per year, 179.

This shows that Judge Swayne was practically the larger portion of the time either in his district, or constructively in it, because when out of it he was holding court under the direction of some higher judge, which holding is entirely consistent with his residence therein, and in no sense inconsistent therewith. In every proper sense, as he always registered from Pensacola, it is probative of residence therein. If you add to the days of actual holding court the time it is estimated he took in traveling to and from these places, as shown in the analysis mentioned, you would have the aggregates. I have not been able to estimate with any definiteness as to Sundays, and nothing is added for the time occupied in drawing opinions or doing other work connected with his office.

Mr. ROBINSON of Arkansas. I want to ask you if you have not overlooked the fact that that statement is contained in the record?

Mr. LITTLEFIELD. Some of them are contained in the record and some are not.

Mr. ROBINSON of Arkansas. Are they not all there?

Mr. LITTLEFIELD. No; they are not all there.

Mr. ROBINSON of Arkansas. The one to which the gentleman has referred?

Mr. LITTLEFIELD. Give me the page.

Mr. ROBINSON of Arkansas. Page 341 of the record.

Mr. LITTLEFIELD. Those were all Texas.

Mr. ROBINSON of Arkansas. Yes.

Mr. LITTLEFIELD. The certificates to which I call the gentleman's attention come from the clerk of the district court in Florida, not Texas.

Mr. ROBINSON of Arkansas. If the gentleman will look on page 339 he will see the certificates for 1899 and a number of other years, and I wanted to find out if it is not true that all the years he has referred to are here embraced in this record in fact.

Mr. LITTLEFIELD. Does the gentleman refer to page 339?

Mr. ROBINSON of Arkansas. Page 339.

Mr. LITTLEFIELD. That is not his district court at all. That is the circuit court of appeals. It is the district court of Florida to which I am calling attention.

Now, let me go on. After having made this analysis I find that the average number of days that the judge was either in Florida—

Mr. SMITH of Kentucky. I wish to ask you a question at that point. Your statement for the year 1900, I believe it is—

Mr. LITTLEFIELD. No; for 1896.

Mr. SMITH of Kentucky. For 1896 accounts for Judge Swayne's presence at various places except from the last of June to a certain date in November.

Mr. LITTLEFIELD. The months in which he was not holding court were August, September, and October.

Mr. SMITH of Kentucky. Where was he in July

Mr. LITTLEFIELD. He was in Pensacola on the 1st of July.

Mr. SMITH of Kentucky. I meant after the 1st. But, anyhow, where was he during that time when he was not holding court?

Mr. LITTLEFIELD. The fair inference would be, I apprehend, that he was spending his vacation in Guyencourt, Del. Now, this whole analysis will show that during all of that time there were some years when he was absent 4 months without holding court at all, other years when he was absent only three months, and a summary will show that on the average he was holding court and traveling to and fro, on an average, of 179 days in the year, about one-half of the time instead of only about 60 days, as urged by the committee.

There is no evidence that any inconvenience of any consequence was sustained by his absence at any time. I will call attention to the testimony of Mr. Lidden, on pages 23 and 84, where Mr. Lidden testified that there was a difficulty in the summer, but it turned out afterwards that the inconvenience was in the spring—during the spring—during the period when Judge Swayne was in the State of Texas holding court.

Mr. Wolf, a witness on the part of the prosecution, testifies that he knows of no particular delay or inconvenience to business. He is asked:

Q. Do you know of any case in which there has been any embarrassment on account of the judge's absence?—A. Not of my own knowledge.

Q. Have you ever heard of any case where delay or embarrassment was occasioned by the judge's absence?—A. No.

Q. Have you ever heard of any civil proceeding in which you have heard that litigants were damaged or injured by the absence of the judge?—A. No; I can not say that I know of any specific case of that kind.

The clerk of the court so testifies, and W. A. Blount, the leading attorney in Florida, also so testifies.

Now, I concede that the judge has not been actually in Florida as long as I would like to have seen him there under these circumstances [laughter]; but these facts indicate that when he has been holding court a very large proportion of the time he has been actually discharging his duty under circumstances consistent with his residence in Florida. I had some doubt about this case until I looked at the authority relied upon by the committee for the purpose of establishing a rule of law in connection with this case, and that was the case of *The People v. Owers* (29 Colo., 535). If I can have the attention of the House I would like to state what the court held in that case, and the state of facts upon which the court made its ruling. It is a state of facts on which the court held that the judge had sustained the burden resting upon him to the satisfaction of the court to establish his residence in Leadville, Colo., where his court was held.

In *People v. Owers* (29 Colo., 535) the court held that the Constitution required the district judge to maintain his actual residence in his district as distinguished from a legal or constructive residence or domicile. It was a quo warranto, and the court held that the burden of proof was upon the judge to clearly establish such a residence. The facts were as follows:

The judge's term began January 9, 1901. The information was filed September 9, 1901. "During that time, on account of the state

of his health, the judge had not actually resided in his judicial district." He had served a six-year term, ending January 9, 1901, and until the spring of 1897 he had clearly resided in Leadville, in his district. At that time his health was impaired, resulting in nervous prostration. He was unable to sleep in such a high altitude and was advised by his physician that his health and life depended upon his spending as much time as possible in a lower altitude. He was married in October, 1897, and from that time, with the exception of five months at Santa Barbara, Cal., he spent most of his time in Denver, 5,000 feet lower, during the last two and three-fourths years, immediately returning to Denver upon the adjournment of his court, when there was no other business requiring his presence or unless he stayed longer for the transaction of his private business, except in a few instances when he went to other parts of the State. From the time of his marriage he either kept house and lived with his wife or boarded with her in Denver, except when she was away on visits, when while in Denver he boarded alone.

His wife and family were never in Leadville but once, and then for less than 10 days, on a visit. For the last 19 months he had an office in Denver with his name painted on the door, the room being rented by a company of which he was the secretary. His name appeared as a resident for 1900 and 1901 in the Denver Directory, but, as he claimed, without his knowledge or direction. During this time when in Leadville he occupied as his sleeping room a room in the courthouse adjoining his chambers and had no other house or dwelling place in Leadville. The furniture, including bedstead, bedding, bureau, washstand, and carpets, was his property. He had in 1898 sold the furniture in the chambers to the county. He paid nothing for the use of his room. He had no other personal property in Leadville, made no tax return, and paid no poll or personal tax during this period. He took his meals at restaurants or hotels, as might be convenient, and had no regular boarding place. His wardrobe he kept in Denver, and took with him when he went to his district sufficient clothing to meet the necessities of a short stop, except that he had sufficient personal and bed linen for his use in Leadville. He was registered as residing at the "courthouse."

For nine years, with the exception of three elections, he voted in Leadville. During this two and three-fourths years he had not been personally present exceeding 300 days, 50 of which were exclusively devoted to campaigning. In 1899, 1900, and 1901 two-thirds to three-fourths of his time was spent out of his district. In legal documents he had always described himself as of Leadville, so registered himself when traveling, had rented a box in its post office, and had his personal envelopes marked for return to Leadville, and had claimed and still claims it as his home, domicile, and residence.

Upon these facts the court held that the Constitution should be given "a reasonable and not a purely technical or literal interpretation": that "it is only a fair and reasonable construction, we think, of the admitted facts to say, and we shall so hold, that it is his bona fide intention as soon as his health will permit, which he hopes will soon be realized, to return to Leadville, in his district, for the purpose of there maintaining his actual residence." Again, "we think it would be a strained construction of the language and a harsh rule to enforce within eight months after the plaintiff's induction into



office to say that because he had not during that time, on account of the state of his health, actually resided in his judicial district and because thus early in his term it is not entirely certain that at some definite future date he would return there, he should therefore be ousted from office." And again, "and although the rule, as we have said, requires him clearly to show a containing right to hold, this rule is in entire harmony with another of equal potency, which is that it is only for some substantial misconduct upon his part that the severe penalty of an ouster should be visited upon him."

Swayne must have resided somewhere. While not, perhaps, absolutely necessary, certainly the most effective way of showing that he did not reside in his district would have been to show that he had a residence elsewhere. There is no successful pretense that he resided elsewhere. He had abandoned St. Augustine. He did not reside in any of the other districts where he had held court. Guyencourt was nothing more than the place where he spent his summer vacations. No other place is suggested as a possible residence. In the Colorado case the judge had an actual and continuous abiding place for himself and family in Denver, out of his district, for four years before the hearing. Swayne has never had any such abiding place. Since October, 1900, at least, it can not be reasonably questioned that he has just such a residence and abiding place for himself and family in Pensacola, Fla. At the time of the hearing the Colorado judge was neither actually abiding nor residing in his district. Swayne is. When the decision was rendered it was not even certain that the Colorado judge would "return to Leadville, in his district, for the purpose of there maintaining his actual residence." The court said he had a "bona fide intention" to do so. Everybody concedes that Swayne is now in his district and a bona fide resident thereof. With the exception of voting, which was no doubt technically necessary in order to make the Colorado judge eligible for election, every fact and circumstance is much stronger in support of residence in this case.

In that case the burden was upon the respondent to satisfy the court that he resided in Leadville. In the case here, under this article, the burden is upon us to satisfy the tribunal that is to try this article, beyond a reasonable doubt, that Judge Swayne did not reside in this district, and I submit that the analysis I have given of the facts in this case is amply borne out by this record and that the facts are much more probative of the residence of Swayne in his district than were the facts before the court in the Colorado case, and held by them to be sufficient when the burden was on the other party. Under these circumstances I do not believe that charge can be sustained by the evidence in this case.

#### BELDEN AND DAVIS CASE.

The next charge is the Belden and Davis case. These charges I will discuss together, because the Davis and Belden case involves simply one proposition. Upon what does the charge in the Davis and Belden case rest? The Davis and Belden case involves the question as to whether or not the judge had purchased or negotiated for lot No. 91, a part of the Gabriel Rivas tract in Pensacola, Fla., and

had thus acquired an interest that made him incompetent to try the case. The first question, I take it to be ascertained, is what were the facts in relation to that alleged purchase?

You will find on page 57 written evidence connected with that proposition in its inception. In the first place, let me say this: I have searched this record in vain for any evidence to establish the fact that Judge Swayne in July, 1901, had any knowledge that there was pending in his court what is known as the "Florida McGuire case," or that he had any knowledge of the character of the declaration in that case which would indicate the question in controversy in that litigation. I haven't any doubt that Judge Swayne knew that it had been in litigation for quite a number of years, because the case had been tried, as the record shows, eleven times. The significance of this point is that there is nothing in the record that shows that Judge Swayne knew that this particular case was pending in his court. It does not appear that any trials had been had of this case then pending. Now, I do not think that it can be presumed that a judge knows every case that is pending on his docket, much less the description in the declaration in the case.

Mr. COCKRAN of New York. Will the gentleman allow me a question?

Mr. LITTLEFIELD. Certainly.

Mr. COCKRAN of New York. I understood the gentleman to say the case had been tried eleven times?

Mr. LITTLEFIELD. The record so shows.

Mr. COCKRAN of New York. In what court was it tried?

Mr. LITTLEFIELD. I do not know; there is nothing in the record to indicate it. I do not know how that may be. This was a new trial of a case that had been tried, as I say, eleven times. In 1901 Judge Swayne was shown about Pensacola, Fla., and shown lot No. 91, a vacant lot, unoccupied, nothing built on it.

There is no presumption that a judge knows what cases are pending upon the docket of his court, and much less can it be assumed that he knows the contents of a declaration. So that the case does not show that when Judge Swayne was negotiating for lot 91 that he had any knowledge that any litigation was pending in relation thereto.

Even if he had seen the declaration, it would have given him no information. It reads:

That certain parcel or piece of land known as the "Gabriel Rivas" of the city of Pensacola, Escambia County, State of Florida, mostly in section 8, township 2 south, range 29 west.

Giving no definite idea of the location of the real estate, and I say there is nothing to indicate that Judge Swayne's attention had been called even to this suit, to this declaration. Well, he had some negotiations and they terminated under these circumstances, Judge Swayne having testified that he knew nothing about this location, and the declaration if he knew about it did not give metes and bounds. The firm of Wilson & Co. negotiated the sale to Mrs. Swayne. Mrs. Swayne had inherited some property from her father, I think, and they were proposing to invest that in Pensacola, Fla.

Mr. Hooten, of Watson & Co., wrote Judge Swayne, July 19, 1901, as follows:

We have deed to block 91, New City, from Mr. Edgar, but he refuses to give a warranty deed to this block; he merely gives quitclaim deed. We have received a letter from him, in which he writes he is unwilling to give anything but a bargain and sale deed, as he is afraid of the old ——— Caro claim on this, which seems to be his objection. We have recently made an abstract of title of this property, and it seems to us we would just as soon have one deed as the other, but we lay the matter before you, so as to have you perfectly satisfied. In case the deed is not satisfactory to you, of course, we will have to drop this deed or wait until you come home. Thanking you for an immediate reply.

Yours, truly,

THOMAS C. WATSON & Co.

To that the only answer was this, dated July 22, 1901:

GENTLEMEN: You may omit block 91 and send papers for the other along, and oblige,

Yours, truly,

CHARLES SWAYNE.

That terminated the transaction so far as the record shows. I do not think anybody will contend that there was any resumption of negotiations. It is true that my distinguished friend the gentleman from Pennsylvania [Mr. Palmer] has an impression that negotiations might have been resumed later, but he will concede himself that that is simply an inference that he draws from the state of facts, and that there is nothing in the record to indicate that there was any such purpose or intention on the part of Judge Swayne.

On the contrary, the statement that Swayne placed on the files of the court November 11, 1901, absolutely negatives that proposition, as appears on page 324. Judge Swayne then said that the deed was returned to the proposed grantors with the statement that no further negotiations whatever could be conducted by them in relation to this property, and they thereupon refused to purchase either at the present time or in the future any portion of said tract. That is Judge Swayne's uncontradicted statement, a part of the record of that court, on its files, made November 11, 1901. There is no other evidence in this case that there were any negotiations or transactions between Watson & Co. on behalf of Mr. Edgar and Judge Swayne and his wife, except this to which I have called attention. Under these circumstances, what happened?

Mr. BURLESON. Mr. Speaker, is it not a fact that judgment was obtained by Watson & Co. because of the sale to Mrs. Swayne?

Mr. LITTLEFIELD. I will call attention to that a little later. I will explain that later. I have that in my mind. Under these circumstances the attorneys for Florida McGuire—Paquet and Belden—wrote Judge Swayne while at Guyencourt, Del., requesting him to recuse himself. He made no reply. The only thing that was done was when Judge Swayne reached Florida and began to hold his term on the 5th of November, 1901. He says, and W. A. Blount says, and the clerk of the court says that Judge Swayne in the presence of Paquet and Davis—Belden had not arrived there—stated substantially these facts: He referred to the party purchasing as a relative, and afterwards said it was his wife, and in substance he informed them that the transaction was terminated. Now, upon what state of facts and upon what basis did these gentlemen proceed to bring the suit they afterwards brought in the State court of Florida against Judge

Swayne? I have the record right here, and I will call attention to it. Paquet and Davis do not undertake to state the basis of that lawsuit. They did not undertake to give their reasons, either as witnesses or in the contempt proceedings, why they brought the suit against Swayne. Mr. Belden is the only witness upon that part of the case, and he says, page 115:

During the summer of 1902 the rumor was general through the town that Judge Swayne had purchased lot 91.

Again:

The rumors were so definite and of such form as to leave no doubt in the minds of counsel of the purchase.

Mark you, it is a rumor; nothing else. It was not information, but a rumor. Then it goes on to say as follows:

We also learned that a suit had been brought by Watson & Co. against Edgar for commissions due them by Edgar, and the records will show it.

That is an answer to the inquiry of the gentleman from Texas [Mr. Burleson]. Mr. Speaker, I have no doubt that is true. I have no doubt that Watson & Co. were legally entitled to their commissions from Mr. Edgar, because they had negotiated the sale and rendered their services, and Mr. Edgar was liable to them, although he could not give and did not give the deed that was required, and the transaction fell to the ground. A little further on I will call attention to a significant fact involved in that suit. Further, Belden says:

Did you have any reason to suppose that Judge Swayne had exercised any acts of ownership?

No.

Did you have any such information before you brought this suit?

I did not, as I stated. I was sick and in my room. The matter was prepared by Judge Paquet.

Did you make any effort to ascertain whether or not a deed had been placed on record by himself or any of his family?

I did not. That branch of it was with the local attorneys.

And there is not the slightest evidence in this case that any local attorney, either Paquet or Davis, made even an inquiry of Watson & Co., who could have been reached any time in five minutes, to ascertain whether or not a deed had been made to Judge Swayne or whether Judge Swayne had even a scintilla of title or pretense of title to that property. They did not even look at the record. They did not dare to inquire of Watson. They knew they would get information they did not want.

There is not the slightest evidence that any man went to the records for the purpose of ascertaining the facts.

Q. Did you go to see Watson and ascertain from him if Judge Swayne had a deed to it?—A. The parties understood they had sold it to him.

Q. They did not say he had not accepted it?—A. I did not see him, but I understood it was stated he had received a deed.

Now, giving it the best construction possible, the only foundation that Mr. Paquet had when he brought that suit in the State court against Judge Swayne was simply a rumor that Judge Swayne had purchased that property for his wife. Now, I submit whether a rumor, wandering from mouth to mouth, gaining strength by every transmission, is a foundation for a lawsuit. Rumor, the diaphanous, odorous emanation, and exhalation of a village sewing circle, a foundation for a lawsuit! Upon what did these gentlemen expect

to rely when they reached the trial of the case they began by this writ?—because it must be assumed if they did it in good faith they expected to try their case. Did they expect to summon into court Dame Rumor as a witness? They concede that is the only witness they had. Did they expect to summon before the tribunal of justice Dame Rumor? I take it for granted that if they had summoned her she would have been halted upon the threshold of that holy temple and dissolved into miasmatic air and “like an insubstantial pageant faded, leaving not a wrack behind.”

Mr. PALMER. Read page 121, which contains the testimony of Belden on the subject.

Mr. LITTLEFIELD. I will read that, and I thank the gentleman for calling my attention to it.

Q. Don't you know at the time of the bringing of the suit neither Judge Swayne nor his wife claimed any interest?—A. Well, we had an understanding from the reports of the agent and Mr. Edgar that the judge had purchased the land, and when we learned that suit was pending in the county judge's court against Edgar, that revealed the fact that the sale had been made to Mrs. Lydia C. Swayne.

Well, who did they sue? They sued Charles Swayne. They did not sue Lydia C. Swayne; they sued Charles Swayne. Now, why did they do that? I will read further:

Q. You said if he would give you until Thursday you would be willing to proceed?—A. Yes.

Q. Why were you willing to proceed if he would give you time?—A. Well, as you have asked the question, we had telegraphed to Judge Pardee, and he had telegraphed us to go ahead and make a record; we were not permitted to make a record.

What record did they intend to make? They intended to make a record of a suit pending in the State courts against him. That was the admitted purpose. They were going to make a record of a suit pending against Charles Swayne when, in the first place, they admitted they had only rumor to base it upon, and, in the next place, Mrs. Lydia C. Swayne should have been the defendant and not Charles Swayne. Now, that is the condition of things as they existed up to Saturday night, when the case was set for trial on Monday morning, with the understanding, as stated by my friend, that it should be tried then and——

Mr. BURLESON. As a matter of fact, the institution of the suit against Mrs. Swayne would have had the same effect, as far as recusing Judge Swayne was concerned.

Mr. LITTLEFIELD. No. Do you say it is the same legal proposition?

Mr. BURLESON. I say it would have had the same effect in regard to disqualifying him.

Mr. LITTLEFIELD. That might be, but they did not propose to rely upon a suit they knew they had the right to bring, but they proposed to bring a suit they knew they had no right to bring upon their own statements, upon their own oaths, so that *prima facie* it would be clearly admissible in the record they proposed to make.

Mr. FITZGERALD. Will the gentleman yield? The testimony shows that Watson & Co. were to negotiate with Judge Swayne.

Mr. LITTLEFIELD. Yes.

Mr. FITZGERALD. And it also shows that they had reported these other persons. Now, was not that a reasonable ground to assume that



he was the man engaged in and intending to purchase the property, and not his wife?

Mr. LITTLEFIELD. Not the slightest in the world.

Mr. FITZGERALD. I would like to have the gentleman clear that up.

Mr. LITTLEFIELD. Well, now, let me clear that up. Here is Mr. Belden, a lawyer who is relying upon rumor for the basis of a lawsuit. Now, the presumption is, he brings that lawsuit with the expectation of maintaining it. The party owning that property, if there was any, was the party he ought to sue. There is no pretense from anybody that Judge Swayne was purchasing for himself. The claim, and the only claim, is that he was negotiating for his wife.

Belden says himself that he knew that suit in favor of Watson & Co. against Edgar was for a sale to Mrs. Swayne, who was the owner.

Mr. FITZGERALD. If the gentleman will permit me, I will say that the deeds and other papers had been sent to Judge Swayne.

Mr. LITTLEFIELD. As a matter of fact, they had not.

Mr. FITZGERALD. That is the testimony.

Mr. LITTLEFIELD. There is undoubtedly a mistake about that.

Mr. FITZGERALD. I am speaking from the record; and then he testifies here:

We had an understanding, from the reports of our agents (that is, Watson & Co., I take it), to Mr. Edgar, that Judge Swayne had purchased the property.

Does not that justify the assumption that Judge Swayne was the person negotiating?

Mr. LITTLEFIELD. No. When he disclosed his knowledge of the existence of a lawsuit in favor of Watson & Co. against Edgar, where the lawsuit showed the sale was to Mrs. Swayne.

Mr. FITZGERALD. Of course, when they went into the case they ascertained it.

Mr. PALMER. Who was the lawsuit for commission against?

Mr. LITTLEFIELD. Against Edgar. And they were entitled to their commissions as against Edgar, so far as they had found a purchaser, if Edgar was not capable of completing the transaction.

He says:

When we learned that suit was pending in the county judge's court against Edgar, it revealed the fact that the land had been sold to Lydia C. Swayne.

Mr. PALMER. There is nothing in the record to show that.

Mr. THAYER. Is it a fair reading of it to come to that conclusion?

Mr. LITTLEFIELD. That suit was pending before they brought their suit. There was no question about that.

Mr. THAYER. Did they know that fact when they brought this suit?

Mr. LITTLEFIELD. He puts it right in the same statement. That is my construction of the testimony. I am obliged to the gentleman for his suggestion.

Mr. THAYER. When he said "when we learned," as though he might have said "later on," isn't it a fair construction of the language here that he meant later on?

Mr. LITTLEFIELD. Now, let me read from part of Belden's testimony that precedes this:

And we also learned that a suit had been brought by Watson & Co. v. Edgar for commissions due them by Edgar; the records will show it.

Here he is giving his reasons for bringing this suit, and he says that is one of the reasons he had for bringing it. Then he goes on to say a little later that he discovered that the declaration revealed the fact that the sale had been made to Mrs. Lydia C. Swayne. You take the two statements together, and there can not be any question in my mind but that it relates to facts existing prior to the bringing of the suit.

Now, let me go on. What is the condition of things on Saturday? Mr. Paquet made the writ for the State court—they call it a “*præcipe*,” I believe—Mr. Davis was called in somewhere about 6 o’clock, and Paquet states that it was then decided to dismiss the suit pending in Judge Swayne’s court. This fact, if it was a fact, can have absolutely no weight in ascertaining whether Judge Swayne was justified in finding Belden and Davis guilty of contempt, as they were not witnesses, and this alleged fact was not made known to him. If it was entitled to weight as showing that no contempt was intended, the Judge should have been informed thereof. To allege it now as impeaching his integrity, when it was concealed from him then, is not only disingenuous, but contemptible. Mr. Paquet, after having called Mr. Davis in and having the conversation with him, wrote the article which was published in the Pensacola newspaper on Sunday morning, having it sent by Mr. Pryor to the newspaper office for publication at about 11 o’clock at night.

Now, I want to call the attention of the House to the significance of that article published in the newspaper. And bear in mind the fact that Mr. Belden has himself said he was advised by Judge Pardee to make a record. That notice states on page 55 of the report, if the gentleman wishes to find it:

It gives notice that a suit had been brought in the State court. Mr. Paquet, who writes the article for the paper, says what? “A decided new move was made.”

A new move was made in what? “In the now celebrated case of Mrs. Florida McGuire.”

That celebrated case! Where was that case pending? It was pending in Judge Swayne’s court, and Paquet’s own statement is that this suit in the State court was a new move in the “celebrated case,” and for fear that there might be some possible question in the public mind as to the purpose of this suit in the State and the case it was intended to affect, he says in conclusion: “And which is a part of the property now in litigation before him”—Judge Swayne. Could anything be more conclusive as to the express intent and purpose of the suit in the State court?

A “move” in what? In the State court? No, in the United States court. That move was an action admittedly based on rumor, not against the pretended principal Mrs. Swayne, but an action against Mr. Swayne, who was not pretended to have any interest in the property. Yes, a new move in the McGuire case with a vengeance. They could not wait for the reporters to learn the facts in the ordinary course. No, they must proclaim it from the housetops at once. Their only purpose must have been to hold Swayne out to the public and disgrace him. That was Saturday before the opening of the court on Monday. On Monday these men came into court, and the statement was made as found on page 324, and made a part of the complete record. Here we come to the important point in this case. Here we come to the statement of Belden and Davis.

Now, I submit that there is no part of the testimony of Mr. Belden where he indicates or says, except in this cross-examination which I have called attention to, that he had any right to bring this suit. This, you must remember, was not given in the contempt hearing, but is his testimony now. Mr. Davis, as a witness, does not undertake to say that he had any right to bring that suit, neither does Paquet.

I will not take time to discuss the proposition of the distinguished gentleman from Pennsylvania that when a constructive or an indirect contempt is committed that it is sufficient if the party comes into court and purges himself of the contempt on oath, because this case does not disclose any such purging. Now, the distinguished gentleman has said a good many times that that was done. He has repeatedly said that Davis and Belden purged themselves of contempt and averred their right as counsel to bring such suit. Five times the committee, in his report, substantially makes this assertion, as follows:

The next day (Tuesday) Davis and Belden appeared and submitted an answer purging themselves of the contempt and averring their right, as counsel, to bring the suit.

\* \* \* \* \*

Second. That if authority can be found in the law for holding the action of these attorneys a contempt, that in the absence of evidence of intent to commit a contempt other than that to be gathered from the fact that the suit was brought Saturday night and the process served the same night, and in the face of their answer that no contempt was thought of or intended, to adjudge them guilty was a gross abuse of power.

\* \* \* \* \*

For a constructive or indirect contempt it is the law that one charged may purge himself, and that he can not thereafter be punished. In this case Judge Swayne listened to no excuse. He found an evil motive for a lawful action without evidence and against the oath of the accused.

\* \* \* \* \*

He ignored the sworn denial of the accused that they had committed or had intended to commit a contempt and without any evidence whatever to establish the fact, except that they had brought a suit against him in the State court and served him with process Saturday night.

\* \* \* \* \*

The answer is that if he had observed the common rules of administering justice and had decided the case as the law requires he would never have thought for a moment of punishing a constructive contempt after the accused had purged themselves under oath.

I do not know what he bases this assertion upon. I am going to read the answer filed in this case by Belden and Davis, and will submit that they not only do not purge themselves of contempt, but they do not say they had any right to bring the suit. They do not intimate that it was in good faith. They do not intimate they had any belief in it, and more than that, it is not made on oath. Now, it was incredible to me that my distinguished friend could make this repeated assertion without any foundation, and I have therefore examined the original answer, and it is not on oath, and it reads exactly as this answer reads here on page 325, omitting the formal part:

And now come Simeon Belden and E. T. Davis and for reasons why they should not be punished by contempt showeth:

First. That the grounds upon which the said contempt is based, to wit: Summons in ejectment issued from the circuit court of Escambia County, Fla., wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, that said proceedings is in the jurisdiction of the circuit court of Escambia County, Fla., and that this court is without jurisdiction thereof.

Now, I ask you to note this: Thus far there is not a suggestion that they had any right to bring it, or that they believed they had any right to bring it, or that it was brought without intending any contempt of the court. Now, let me go a little further:

Second. That the petition to recuse referred to in said motion they had nothing to do with before this court, nor were they present on the 5th day of November when submitted, as stated in said motion, nor present when any statement made by the judge concerning his connection with any of the property, except the statement made by said judge on November 11, after court convened and after the motion to discontinue the case of *Florida McGuire v. Pensacola City Co. et al.* was made.

Not an intimation yet that they had a right to bring it, or that they thought they had a right to bring it, or that they believed they had a right to bring it; not an intimation that they were purging themselves of contempt. Let me go on and read:

Third. To the second paragraph showeth: As above stated, they heard no declaration made by the judge referred to in said paragraph, and as for reasons to believe that he, Judge Swayne, or some member of his family, was interested in block 91, Rivas tract of land, named in said summons, we simply refer to the declaration made by Hon. Charles Swayne on November 11, 1901—

Two days after the suit was brought, mind you—

when said motion was made by the Hon. W. A. Blount, and that after hearing said declaration, believe there is in existence a deed to Mrs. Charles Swayne uncanceled, and that they have no knowledge of its repudiation, and as the negotiations for the property named in said deed was one made by Mrs. Charles Swayne in her individual right, that no act of the said Hon. Charles Swayne would repudiate or render null and void any transaction made by Mrs. Charles Swayne with her own money or property.

Relying altogether upon the statement made two days after they brought this suit; not an intimation that they believed their suit was in good faith; not an intimation that they believed they had a right to bring it. Then the next paragraph is:

Fourth. That E. T. Davis, for himself, showeth that this court had no jurisdiction over him in said matter of *Florida McGuire v. Pensacola City Co. et al.* until requested the court to mark his name as attorney for plaintiff on the morning of November 11, when he presented the motion to discontinue the aforesaid suit.

SIMEON BELDEN.  
E. T. DAVIS.

That is the answer. That is all there is in the answer. There is no statement, I submit, in the answer that they had not been guilty of contempt; that they did not intend any contempt, or that they believed they had any right to bring that suit. No purging or apologizing. Let me go further:

Belden himself, as I have already stated, is a witness, and he swears as follows, on page 116:

Q. You said you filed an answer purging yourself of contempt?—A. Oh, no; I knew I had committed no offense, and I did not apologize. I would have stayed in jail until now before I would have apologized.

Now, there is the answer which the gentleman asserts over and over again in his report was a purging on oath. In his last statement the gentleman's attention was called by Judge Swayne to the fact that the answer did not disclose any such state of facts as he stated in his report, and that it was not on oath that there was no purging, and yet the gentleman repeats the baseless statement in his

speech before the House six times and repeats it in his speech here to-day—making the assertion that they had purged themselves of contempt in these proceedings.

These are the unfounded assertions he makes when urging the adoption of the impeachment resolutions:

Judge Swayne ordered a rule to show cause upon an unsworn statement prepared by Blount, which was served on Davis and Belden, Paquet being absent. The next day (Tuesday) Davis and Belden appeared and submitted an answer purging themselves of the contempt and averring their right, as counsel, to bring the suit.

\* \* \* \* \*

Second. That if authority can be found in the law for holding the action of these attorneys a contempt, that in the absence of evidence of intent to commit a contempt other than that to be gathered from the fact that the suit was brought Saturday night and the process served the same night, and in the face of their answer that no contempt was thought of or intended, to adjudge them guilty was a gross abuse of power.

\* \* \* \* \*

For a constructive or indirect contempt it is the law that one charged may purge himself, and that he can not thereafter be punished. In this case Judge Swayne listened to no excuse. He found an evil motive for a lawful action without evidence and against the oath of the accused.

\* \* \* \* \*

He knew that in a rule to show cause why a person shall not be punished for contempt the actual intention of the respondent is material, in which respect it differs from an indictment for the like offense. Therefore, when the respondent meets the words of the rule by disavowing, upon oath, any intention of committing in contempt of court, the rule must be discharged.

\* \* \* \* \*

He ignored the sworn denial of the accused that they had committed or had intended to commit a contempt, and without any evidence whatever to establish the fact, except that they had brought a suit against him in the State court and served him with process Saturday night.

\* \* \* \* \*

The answer is that if he had observed the common rules of administering justice and had decided the case as the law requires he would never have thought for a moment of punishing a constructive contempt after the accused had purged themselves under oath.

I do not know what foundation he has or claims for it. I have given to the House all the evidence there is in the record bearing upon it. Their answer does not show it. It is not on oath, it does not deny contempt, or claim good faith, and the testimony of Belden flatly contradicts it. I do not know how far the impression that the gentleman has made when he makes these statements may go with the House in producing conviction in connection with this case, but I do know that if he should ever reach a tribunal higher than this they will be bound by the record, and the gentleman will not be able to succeed in manufacturing facts by the impression that he has of the facts when the actual facts are disclosed by this record.

Mr. SMITH of Kentucky. Will the gentleman allow me to interrupt him?

Mr. LITTLEFIELD. Yes.

Mr. SMITH of Kentucky. Does not that answer of Judge Belden reveal the fact that he did not intend to commit any contempt of court?

Mr. LITTLEFIELD. Yes; but the answer that Judge Belden made, that I have read to you, was made in 1904, not in 1901, when the



case was being tried. He swears in so many words that he did not purge himself and that he would not purge himself.

Mr. SMITH of Kentucky. Because he had not committed any contempt.

Mr. LITTLEFIELD. Very true, that is his proposition; but the impression that my friend had was that he had purged himself. Now, let me go a little bit further.

Mr. CLAYTON. May I interrupt the gentleman?

Mr. LITTLEFIELD. Yes; certainly.

Mr. CLAYTON. Was not the language of Judge Belden that you refer to to this effect—that he did not apologize for what he had done; that he said he had not done any wrong; that he had done what he had a right to do, and therefore he had nothing to apologize for?

Mr. LITTLEFIELD. I have read what he said.

Mr. PALMER. On page 116 he testifies in answer to the question:

Q. Did you file your answer—purge yourself?—A. Yes.

Mr. LITTLEFIELD. Now, wait and see if he understood it. Does the gentleman from Pennsylvania say now that that answer was on oath?

Mr. PALMER. I do not say that.

Mr. LITTLEFIELD. Haven't you stated it repeatedly?

Mr. PALMER. I am not on trial, and I do not propose——

Mr. LITTLEFIELD. No, but you do not want the House to get a wrong impression of this case, do you?

Mr. PALMER. No, and I do not think it will.

Mr. LITTLEFIELD. I hope not.

Mr. CLAYTON. You ask about the answer of Davis and Belden not being on oath. May I call your attention to the fact that the accusation filed by Mr. Blount under the direction of the court was not on oath?

Mr. LITTLEFIELD. Precisely so, and it is not required to be on oath; and when the majority of this committee assert as a legal proposition that it is required to be on oath, why, they simply undertake to overrule the Supreme Court of the United States in the Savin case.

Now, the committee ought to be presumed to know the law, and in that case either the committee does not know the law or the Supreme Court of the United States does not know the law. As for me, I will stay with the Supreme Court. But that does not answer my suggestion.

Mr. CLAYTON. Did not the judge here testify at that time in relation to the Belden and Davis answer that it was not sworn to, and did he not swear witnesses and hear them in support of their contention?

Mr. LITTLEFIELD. Certainly; but Davis and Belden did not go on the stand.

Mr. CLAYTON. Sworn testimony was offered.

Mr. LITTLEFIELD. But Davis and Belden did not go on the stand.

Mr. CLAYTON. There is nothing in the record to contradict the idea that they were examined.

Mr. LITTLEFIELD. There is nothing in the record to indicate that Davis and Belden were witnesses in that proceeding. The point I make is this: I want the House to understand it, because some Members of the House will read the report, and some Members will read

the speech of the gentleman from Pennsylvania [Mr. Palmer]. The Members of the House ought not to be misled by the assertion of my distinguished friend, an assertion made eleven times in the course of his report and speech, that this answer was on oath, in substance, and had to be on oath in order for them to purge themselves. The gentleman from Pennsylvania said it was on oath. I do not know whether he knew it before he made his report, but his attention was specifically called to it before he made his speech the other day, but he repeated the assertion six times. I do not know whether he knew it before he made his speech this afternoon and when he made the assertion before the House, but the House must understand that the record does not sustain the assertion of my distinguished friend.

Mr. Fitzgerald rose.

Mr. LITTLEFIELD. Excuse me until I finish my argument on this point. I do not know what the gentleman's purpose is. I know what the facts are, and I know that the answer itself does not indicate that he purged himself, and I know that it is not on oath, and that is the crucial point, so far as this part of the case is concerned. The fact that the accusation was not on oath has no more connection with their answer than a last year's bird's nest. It was proper to proceed without the oath, so far as the accusation was concerned.

Mr. Fitzgerald rose.

Mr. LITTLEFIELD. I beg the gentleman's pardon. I hope he will not interrupt me until I close this point. I can not proceed with any continuity in my argument unless I am allowed to go on without interruption. Here are Davis and Belden signing this answer. Now, the case discloses beyond all controversy that Paquet was the leading counsel in the Florida McGuire suit. He swears, and other men swear, that Paquet made the writ for the State court. He was not a member of the State court bar, and Davis was, and Davis was the man that filed it. Marsh says that Paquet admitted that the article for the newspaper was in his handwriting. I have seen the article, although I do not know his handwriting. It was written in pencil. Paquet was the leading man in the case, and he said that he had made a new move in this Florida McGuire case.

Now, what did Paquet do? He did not come into court at the time Davis and Belden did, because he did not happen to be in the jurisdiction; but proceedings were begun against Paquet the same as against Davis and Belden. The first thing that Paquet did was to sue out a writ of prohibition to prohibit Judge Swayne from proceeding in the contempt proceedings, and he found that that writ of prohibition would not lie. What did he then do? Paquet—and here is a piece of evidence not printed in the record. I do not know as that has any significance here, because you can find it in the minority views; but it is a most significant piece of evidence—

Mr. PALMER. It was not printed in the record, because it was not offered in evidence. I do not know how it got into the minority report.

Mr. LITTLEFIELD. That all may be. I will tell the gentleman how it got into the minority views. The original papers in the case were handed to me by Mr. Gillett of California during the last session. I looked the files over, and in these files I found this notice and this statement of Paquet. I handed them to Mr. Gillett. They are im-

portant papers in this case. Does any man suggest that these papers ought to have been suppressed when I found them? Evidence against the conspirators in the suit in the State court. Was it for me, when I discovered these papers on the original files in that case, to keep them and suppress them and not let the House know of them?

Mr. PALMER. If they were important, was it not for Judge Swayne to put them in evidence?

Mr. LITTLEFIELD. It may be that it was for Judge Swayne to put them in evidence, but the gentleman would have to meet it if he went to the Senate.

Let me go on a little further. Paquet's answer is found on page 55 of the record. He says:

That upon full and mature consideration of his actions and conduct in the matter referred to in the motion, made as the basis of the above-entitled proceedings, through excessive zeal in behalf of his clients, he did so act that this honorable court was justified in believing that the said actions were committed in contempt thereof and as showing disrespect therefor. That respondent regrets exceedingly the course taken by him in this matter, and now appears in court and requests that he be permitted to apologize for his behavior and file with the records in the above-entitled cause this paper.

LOUIS P. PAQUET, *Respondent*.

Filed March 31, 1902.

F. W. MARSH, *Clerk*.

The significance of that is that the chief conspirator——

Mr. HENRY of Texas. Mr. Speaker, will the gentleman permit a question?

Mr. LITTLEFIELD. No; I can not. The gentleman will please excuse me until I finish the argument.

Mr. HENRY of Texas. I desire to ask a question on that particular paper. I desire to ask whether Paquet swore to his answer?

Mr. LITTLEFIELD. No.

Mr. HENRY of Texas. Well, Judge Swayne contended——

Mr. LITTLEFIELD. And Judge Swayne says in his sworn testimony before the subcommittee that if Belden and Davis had come into his court and made the same kind of a statement that was made by Paquet—the leading counsel in the Florida McGuire case, who originated the transaction and who was preparing to make a record on the suggestion of Judge Pardee—that if Belden and Davis had come in and made the same statement he would have excused them as he did Paquet.

Mr. RUSSELL. Mr. Speaker, I desire to hear the gentleman on this legal proposition: Judge Swayne contended these attorneys were guilty of official misconduct in acting as attorneys in his court and in the other court. Now, is it not a fact that he regarded all three of the attorneys, Belden, Davis, and Paquet, as acting under the sanction of their official oaths as attorneys, and did not require any of them to make an affidavit?

Mr. LITTLEFIELD. There is no such evidence in the case.

Mr. RUSSELL. Would not that be the proper inference—would not an attorney be acting under the sanction of his official oath?

Mr. LITTLEFIELD. That wouldn't give to the answer the sanctity of an oath. I would say this now, and if the House will give me a little attention I will try to demonstrate from the record in this case, the printed material, that the probabilities are that if Belden and

Davis had sworn to the statement they filed they could have been convicted of perjury on the printed record itself. That is a pretty broad statement to make, but let me say to you——

Mr. FITZGERALD. Mr. Speaker, I think that is already in the record. I desire to ask the gentleman if these gentlemen did not so testify, and if it does not so appear in the record?

Mr. LITTLEFIELD. Where?

Mr. FITZGERALD. That is the inference from this order which was signed, the order entered in the contempt proceedings against Davis—"after hearing the testimony of the witnesses introduced by the United States and by the said defendant." Now, who could have been witnesses except Davis and Belden?

Mr. GILLET of California. I will answer that, Mr. Speaker. Blount and Fisher were put on the stand and sworn.

Mr. BUTLER of Pennsylvania. They were not sworn.

Mr. GILLET of California. No.

Mr. FITZGERALD. On the stand before Judge Swayne?

Mr. LITTLEFIELD. No.

Mr. GILLET of California. Blount and Fisher were put on the stand by Davis and Belden as their witnesses.

Mr. FITZGERALD. That is remarkable.

Mr. LITTLEFIELD. It does not make any difference whether it is remarkable or not. It is true. There is not a thing in the record that shows that Davis and Belden were witnesses, and that does not show it.

Mr. Burleson rose.

Mr. LITTLEFIELD. No; I beg pardon; I can not yield. I want right here now to call attention to the assertion I made. This answer I say is not only not on oath, but I want to submit to the consideration of this House, as bearing on the conduct of these attorneys, when they were presented before Judge Swayne for the determination of the question as to whether they had committed a contempt, the character of the answer they filed.

Now, what do they say? I want you to notice that. They say, "We simply refer for our knowledge to the declaration made by the Hon. Charles Swayne on November 11, 1901." That declaration appears on page 324. What was that declaration made by Judge Swayne? The court record in this case, made November 11, 1901, shows that Judge Swayne "said the deed was returned to the proposed grantors with the statement that no further negotiations whatever could be conducted by them in relation to this property, and they thereupon refused to purchase either at the present time or in the future any portion of said tract." This was a distinct repudiation of that whole transaction, according to that declaration, mark you, of November 11, 1901. Now, what do these men say? They say that for their knowledge they refer to that declaration containing that repudiation, and they then have the nerve to say, in a statement that they did not swear to, that they have no knowledge of its repudiation. The very statement that they refer to showed the repudiation. They come into Judge Swayne's court and file a written statement, and refer to that statement which shows repudiation, and then say they have no knowledge of repudiation. And I submit before any fair-minded, intelligent jury the statement of that fact alone and

the production of that record would disclose a falsehood, and a willful falsehood, on the part of these attorneys, and it was gross misconduct in connection with the trial at that time on their part, and Judge Swayne was bound to take it into account in reaching his conclusion as to whether they were acting with him in good faith.

Again, attention has been called, and very properly, to the statements made by Judge Swayne when he imposed this sentence as bearing upon the question.

Mr. BURLESON. Before the gentleman goes to that branch of the subject, will the gentleman yield for this question? I am quite sure the gentleman means to be fair and accurate in his statements.

Mr. LITTLEFIELD. I hope to be.

Mr. BURLESON. You have repeatedly stated here that these two attorneys did not attempt to purge themselves.

Mr. LITTLEFIELD. Yes.

Mr. BURLESON. Now, as a matter of fact, did they not file an answer setting forth a fact which, if true, would have purged themselves of contempt, and did not Judge Swayne take issue with them upon the truthfulness of the fact therein set forth and have a trial of it in his court?

Mr. LITTLEFIELD. The statement that they filed on its face showed that it was false. That statement referred to the record of the court, and the record of the court said the transaction had been repudiated, and their statement, which you intimate was a purging of contempt, was in reality the committing of another contempt, because it made a statement absolutely contradicted by the record referred to.

Mr. BURLESON. He did have a trial.

Mr. LITTLEFIELD. Certainly he had a trial, of course. Now, let me go on. Complaint is made that Judge Swayne used some expressions on this occasion that were not in accordance with the proprieties of the occasion. Let me show what he did say as to that fact. This statement is largely the result of the leading cross-examination of the lawyers for the prosecution. Here is what Davis says:

Q. At the time of imposing this sentence, what was Judge Swayne's manner?—A. Very abusive.

Q. Can you state what he said?—A. I don't know that I can state it in so many words. He called us ignorant; said our action was a stench in the nostrils of the people, and a good many other things I can not repeat.

Q. His manner was very harsh and abusive?—A. Extremely so.

Now, in regard to Belden:

Q. Now, I will ask you what was the manner of Judge Swayne when he was inflicting this penalty?—A. Well, it was gross and offensive; he entered into a slanderous attack on the attorneys.

Q. Very slanderous?—A. Yes.

Q. Tell what he said?—A. I don't recollect his words exactly; it was published in the newspapers here.

Q. It was harsh and offensive?—A. Very, indeed.

Now, I have in my hand one of the newspapers and I am going to read what the newspapers said, inasmuch as Judge Belden based his statement of the offensive language on what was published in the newspapers.

Mr. SHERLEY. Is that in the record?

Mr. LITTLEFIELD. No, sir; this is *dehors* the record. I am going to give this as part of my speech.

Mr. SHERLEY. Do you consider that proper?



Mr. LITTLEFIELD. Yes, sir.

Mr. RHEA. How do you know he referred to that paper?

Mr. LITTLEFIELD. I am going to read both the papers published at Pensacola—the Pensacola News and the Pensacola Journal. I will read from both of them. He refers to the newspapers themselves. Now, if the gentleman thinks I am inventing this newspaper—

Mr. RHEA. I do not suggest that at all, sir.

Mr. OVERSTREET. What is the date of the newspapers?

Mr. LITTLEFIELD. I will give it to you. When I noticed that Judge Belden based his statement on the characterization of Judge Swayne upon the report of the newspapers, I very naturally began to investigate to ascertain the facts. This first is dated Pensacola, Fla., Tuesday, November 12, 1901, the very day the case was tried there or the language was used there, and here is what the Pensacola News says:

#### ATTORNEYS HELD FOR CONTEMPT.

Samuel Belden, Esq., and E. T. Davis, Esq., were fined \$100 and costs each, and to be confined 10 days each in the county jail, for contempt of court. The sentences were passed in the presence of almost the entire city bar, and were imposed by Judge Charles Swayne, of the United States district court for the northern district of Florida. The sentences were pronounced at exactly 11.10 o'clock to-day in the United States court room, and immediately afterwards the court took an adjournment until 10 a. m. to-morrow.

Court was convened this morning at 10.03 o'clock, and in the presence of a large number of representative citizens. The fact had become public that there was a probability of something of a sensational nature to develop, and curiosity manifested itself among the better class of people.

Immediately upon convening of the court Mr. Davis, one of the attorneys in the proceedings, in behalf of himself and associates submitted to the court reasons why the proceedings of contempt should not be carried out, and quoted authorities bearing upon jurisdiction of the court in contempt proceedings. The reasons were submitted in writing after being read by defendant and were placed on file by the clerk.

Hons. William Fisher and W. A. Blount, in behalf of the court, asked that witnesses for defendants be called. They were John Denham and E. B. Barker, both of whom are connected with the Press. The first named knew nothing of the authorship of an article entitled "Judge Swayne summoned," etc., which appeared in that paper Sunday morning, and upon the strength of which were based the proceedings of contempt. The original manuscript of the article was produced in court by this witness, but as he could give no information as to authorship, etc., he was excused and the night editor, E. B. Barker, called.

In response to interrogations, witness stated he was connected with the Press; that on Saturday night last, about 11 o'clock, G. W. Pryor (who, it afterwards developed, had furnished money for prosecuting the case) had submitted it as a news item, and that in that capacity it was accepted and printed.

Capt. J. C. Keyser was called as witness on behalf of the court. He said, among other things, that he thought he was an heir to property in litigation; that he had carried the præcipe for summons to the circuit clerk after 6 p. m. Saturday, and had told clerk to file same and issue papers before Monday; that his expenses on a recent trip to Jacksonville had been borne by outside parties, the names of whom he could not recollect. This witness seemed to testify with great reluctance and showed an apparent disposition to dodge questions propounded by court's attorney.

B. H. Burton, deputy clerk of circuit court, called. Stated præcipe for summons had been brought to his home late Saturday with a request to issue papers at once, as they had to be served instant; that he had issued papers, and that he was conversant with all duties appertaining to the office which he filled and possessed a knowledge of legal papers, etc.

At the conclusion of Mr. Burton's testimony Mr. Davis created a sensation of a mild nature by requesting the court's attorneys to be used as his witnesses. Mr. Blount and Mr. Fisher were then sworn and answered two questions each bearing on ownership of property and case in general. This finished testimony of witnesses.

Judge Swayne, after a short deliberation, spoke of what he termed crooked methods adopted by counsel for the plaintiffs; that the law, the highest calling in the land, had been disgraced by the ignorance and vicious methods pursued by counsel who should know better; that the methods adopted by them in taking the suit to the State court could not be looked over, as there was not a particle of excuse for it, and, in consonance with their duty, the attorney's (Messrs. Blount and Fisher) had brought the matter to the court's attention. Adverting to the evidence adduced, Judge Swayne characterized some of it as bearing the brand of perjury of the most pronounced type; that the witness (whose name was not called) had dodged the questions propounded at every opportunity, and had made false statements to meet the occasion.

The judge spoke of the ages of the defendants and had gone out of his way to endeavor to rid himself of performing the saddest thing he had done in the 12 years he had occupied the bench—that of imposing a sentence when he found he could not dispose of the matter otherwise. In conclusion he said:

"In conclusion, the court finds the two gentlemen, E. S. Belden and E. T. Davis, guilty as charged, and they shall pay a fine of \$100 each and costs, be suspended from practice in this court for two years, and be imprisoned in the county jail for a term of 10 days each."

The judge ended pronouncing the penalty with much feeling, but upon the intercession of Hon. W. A. Blount, the portion of the penalty in relation to a two years' suspension of practice was reconsidered and withdrawn.

Now, I will read what the Pensacola Journal says about it, and I will put this article in in extenso.

Mr. PALMER. Do you not think that justified Belden pretty well?

Mr. LITTLEFIELD. Well, I do not see any stench in the nostrils of the community.

Mr. PALMER. That is too thin.

Mr. LITTLEFIELD. I am giving you the benefit of this, as far as that is concerned. Here is what the Pensacola Journal says:

[From the Pensacola (Fla.) Journal, Wednesday, Nov. 13, 1901.]

TWO SENTENCED FOR CONTEMPT OF COURT—FINED \$100 EACH AND COMMITTED—ATTORNEYS BELDEN AND DAVIS WILL SPEND TEN DAYS IN JAIL—JUDGE PAQUET IN NEW ORLEANS—WENT THERE BEFORE SUMMONS COULD BE SERVED ON HIM TO VISIT SICK WIFE—HIS RETURN EXPECTED—DISBARMENT IN ORIGINAL SENTENCE, BUT STRICKEN OUT AFTERWARDS.

Quiet a large number of citizens of the city assembled in the United States court room yesterday morning to hear the contempt proceedings against Simeon Belden, E. T. Davis, and Louis Paquet, instituted the day previous by W. A. Blount, on the ground that the said attorneys had, as attorneys, procured a summons in ejectment in the State courts against the judge of the United States court. Mr. Blount on Monday moved that the attorneys for Florida McGuire be cited to appear at 10 a. m. Tuesday to show cause why they should not be committed for contempt, and at 10 o'clock yesterday the case was called, two of the defendants in the proceedings, Simeon Belden and E. T. Davis, being present, the remaining one, Louis Paquet, having left the city for New Orleans prior to the issuing of the order, owing to illness in his family.

The result of the proceedings was that E. T. Davis and Simeon Belden were each sentenced by the court to pay a fine of \$100, and costs, serve 10 days in jail, and be debarred from practice in the court for a period of two years. The latter sentence was reconsidered and withdrawn upon the intervention of W. A. Blount.

When court was called to order Mr. Davis, in behalf of himself and associates, submitted reasons why the proceedings should not be carried out, and read authorities upon the jurisdiction of the court in hearing said proceedings.

#### THE HEARING.

W. A. Blount and William Fisher appeared in behalf of the court, and had called as witnesses E. B. Barker and John Denham. The latter was first called to the stand and asked regarding the publication of an article in his paper entitled "Judge Swayne Summoned." Not being able to give the authority for the article in question, E. B. Barker was called and said that the article had

been given to him late Saturday night by George W. Pryor and had been published as a news item.

J. C. Keyser was next called and asked regarding the præcipe for summons, stating that he had carried it after 6 p. m. Saturday night to the clerk of the circuit court and asked that the necessary paper be issued, which had been complied with.

B. H. Burton, deputy clerk of the circuit court, testified regarding the issuance of the papers upon Judge Swayne, and the statement of Mr. Keyser when he called upon him to secure the same.

Mr. Davis, in behalf of himself and associates, requested that Messrs. Blount and Fisher be sworn as witnesses, which was done, and he propounded to them a few questions regarding the ownership of the property now held by the Pensacola City Company et al.

This concluded the evidence in the case, the hearing of which consumed about an hour.

#### JUDGE SWAYNE'S REMARKS.

Judge Swayne then spoke upon the case, stating, in part, that the court had been dragged into disgrace by counsel who should have known better, and that the counsel had pursued vicious methods; that there was no excuse for the action which they had taken, and as Mr. Blount had brought the matter to the attention of court, it could not be overlooked. He spoke of the evidence that had been adduced at the hearing and stated that one of the witnesses had tried to dodge every question propounded. Taking up the matter of the attorneys upon trial he spoke of their ages and said that it was one of the saddest matters to come before him during his 12 years upon the bench.

The judge then pronounced sentence upon the attorneys, that they should pay a fine of \$100 and costs, serve 10 days in jail, and be debarred from the courts for a period of 2 years. Mr. Blount, regarding the latter sentence, interceded for the attorneys, and the court reconsidered that portion.

Court then adjourned until 10 o'clock to-day.

#### SERVING THE SENTENCE.

The attorneys, Messrs. Davis and Belden, immediately began serving the sentence of 10 days in jail. They received numerous calls during the afternoon from their friends and acquaintances, and, although serving a sentence imposed by the court, they seemed cheerful and chatted away pleasantly during the afternoon.

A reporter for the Journal called upon the gentlemen in the jailor's office, where they are confined, and requested an interview. Both stated that at present they had nothing to say for publication, deeming it best not to speak upon the matter during their incarceration, having been advised to adopt this course by their friends.

Judge Paquet, one of the defendants in the contempt proceedings, is now in New Orleans. He left here Sunday for that city upon information that his wife was quite ill. It is not known yet whether the same disposition will be made in his case or not, but presumably it will. It is not probable that the judge will be sent for. On the other hand, it is said that he will return to Pensacola as soon as possible. As the order of the court was not served upon him, having been issued after his departure, it is possible that another hearing of the case will be had.

It was rumored yesterday afternoon that proceedings would be instituted to have the attorneys released from the jail, but no confirmation of this report could be had.

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#### NORTHERN DISTRICT OF FLORIDA, ss:

Before the undersigned this day personally appeared Frank L. Mayes, who, being duly sworn, deposes and says that he is the publisher of the Pensacola Daily Journal, a newspaper published in the city of Pensacola, Fla., and that he was such publisher on the 13th day of November, A. D. 1901; that the foregoing is a true copy of an article published on that date in said paper, as the same is evidenced from the files of said publication now in the office of said newspaper.

FRANK L. MAYES.

Sworn to and subscribed before me this 22d day of December, A. D. 1904.

[SEAL.]

F. W. MARSH,

Clerk U. S. District Court, Northern District of Florida.

Now, there is the statement, and I think that amply bears out Judge Swayne's statement. If attorneys could be allowed to come into court, file a statement, that on its face was false, in connection with the suit in the State court practically admitted to be groundless by the men who brought the suit, how could you conceive anything more demonstrative of deliberate contempt of court?

Just a word as to the connection of Mr. Davis with this case. Davis said he had no connection with the case until Saturday. All I can say about that is simply this: Mr. Marsh testifies that he was about the courthouse talking about *præcipes* Saturday and he was in the case Saturday afternoon. The suit was brought at about 8 o'clock Saturday night. Mr. Keyser, who was one of the plaintiffs in interest, says that the attorneys for the plaintiffs wrote the letter to Judge Swayne asking him to rescue himself, and when he is asked what attorneys asked him to recuse himself, he says:

I think Mr. Davis and Gen. Belden.

Belden himself says:

Q. Was there anything to prevent your going on, the judge making his ruling dismissing the case or taking such course as the judge saw fit to take, and then taking an appeal from that judgment?—A. After receiving the telegram from Judge Pardee, Mr. Davis was to make up the record in the case, so if there was error we could appeal it, take it up by writ of error. We intended to proceed, but the judge calling the case Saturday evening, 9th of November, refusing to allow us time to get our witnesses before the court, we were deprived of the facilities of making up such record as Judge Pardee contemplated we would make, and we had to discontinue it.

The telegram from Pardee was long before the suit in the State court was brought, and it is evident that shortly after that at least that Davis was in the case.

Mr. Paquet said:

Q. Was Davis brought into that case in the United States court before the suit was commenced against Judge Swayne?—A. My impression is he was employed that evening; in fact, I think he was one of the advising counsel with the clients. He told me he was associated; asked if I had any objections.

Q. That was before the suit commenced against Swayne?—A. Yes; about 5 or 6 o'clock in the afternoon.

Q. Was Davis frequently in court advising with Judge Belden and yourself during the week?—A. Not advising with me. He was in court very frequently advising with some of the plaintiffs.

So here you have the statement of Mr. Marsh, you have the statement of Mr. Belden, you have the statement of Mr. Paquet that Davis was associated in the Florida McGuire case during that week. It seems to me that the action of these attorneys, from their own admissions, are without foundation.

And then I ought to note the fact that the Florida McGuire suit, although pending in that circuit court and discontinued on Monday, was rebrought in that same circuit court. It is true that Mr. Edgar was made a party defendant in the process in the suit pending when they brought the suit in the State court. No service had ever been made upon him. If he was an owner then, he was an owner later. If Judge Swayne was an owner then, although they had no reason to think so, he was an owner later.

Well, later they brought another suit for the same cause of action, where they ought to have joined the same parties if it was in good faith. They did not join either Swayne, Mrs. Swayne, or Edgar in

their second suit. They left them all out, and there is nothing in this record to indicate why they were left out, except the fact that we may infer that Edgar in the beginning had no real foundation of claim, and they only put him in the first suit probably for the purpose of wiping out some colorable title. But when they brought their final suit they joined all other parties, but left out these insignificant parties, who ought to have been parties thereto, provided their original contention was valid and upon good grounds and that their action was taken in good faith.

Did the court, under these circumstances, have jurisdiction to hear and determine this case as to whether these men were guilty of contempt? I am satisfied with the admission of Paquet, to which I have called your attention, and these other facts, that not only does the evidence not establish this case beyond a reasonable doubt, but under the facts I believe it was the duty of Judge Swayne to administer punishment to these attorneys under these circumstances, because I believe they had been grossly derelict as attorneys.

Mr. CHARLES B. LANDIS. What is your opinion of the judge's action in insisting on sitting on this case under circumstances as developed?

Mr. LITTLEFIELD. I think he had a perfect right to sit. If they could drive him off the bench with the suggestions that have been shown to be absolutely baseless they could drive any judge off the bench under any circumstances.

Mr. SCOTT. In that same connection I would like to ask the gentleman if there is anything in the record to show the reason why these attorneys did not want to try this case, if it was true that Judge Swayne had no interest in it, and their appeal to him to recuse himself had no real basis? What was their motive?

Mr. LITTLEFIELD. I can not tell you what their motive was. They state that they were ready to go to trial. It would have gone to trial on Thursday. The witnesses were all right around Pensacola, Fla. There is no intimation, and I do not know what their purpose was; I do not know what their reason was. I simply know that they adopted this subterfuge for the purpose of undertaking to get rid of Judge Swayne in connection with the trial of that case. There is no suggestion or intimation other than the facts to which I have referred in the case. It was tried by Judge Swayne later on.

Mr. PALMER. Do you say that the rumors were baseless that Judge Swayne had purchased this property? There is no evidence in the case that Mrs. Swayne ever negotiated for it. All the testimony is that Swayne himself negotiated the purchase and put the deed in his wife's name, though Swayne himself was the real owner.

Mr. LITTLEFIELD. Now, there is no evidence in this case that forms a basis for that insinuation of the gentleman from Pennsylvania—not a particle.

Mr. PALMER. What assumption?

Mr. LITTLEFIELD. This insinuation that he was having the purchase made and the title put in her name, because Judge Swayne swore, and nobody undertakes to contradict it, that his wife had inherited property from her father and that she was investing that money on her own account and that she was buying this property through him, and it is not fair to suggest——

Mr. PALMER. Who negotiated?

Mr. LITTLEFIELD. Who negotiated? He negotiated. He had the right to negotiate. When my distinguished friend from Pennsyl-



vania suggests that Judge Swayne made this purchase and took the title in his wife's name, carrying an impression that he was the real owner, he knows there is nothing in this record to justify it. That all the uncontradicted evidence in this case shows that it was her own money and her own property, and it was personal to her. That is what the record in this case shows.

Mr. COCKRAN of New York. Will the gentleman allow me there?

Mr. LITTLEFIELD. Certainly.

Mr. COCKRAN of New York. I believe we are now at the very crux of this question. I understand the gentleman from Maine to state that Judge Swayne purchased this property for his wife.

Mr. LITTLEFIELD. He negotiated for it.

Mr. COCKRAN. And purchased it for her out of funds belonging to her, coming to her from her father's estate.

Mr. LITTLEFIELD. Well, now, the gentleman from Maine stated it this way.

Mr. COCKRAN of New York. I want to get at it as the gentleman stated it.

Mr. LITTLEFIELD. I stated it this way. He had negotiated the sale. No purchase was ever completed to anybody; no deed was ever delivered to anybody.

Mr. COCKRAN of New York. Now, the reason the purchase was not completed was that Judge Swayne declined to accept it.

Mr. LITTLEFIELD. Yes.

Mr. COCKRAN of New York. That was Judge Swayne's own act. Now, is there any doubt that Judge Swayne must have passed on the question of title, to some extent, before deciding to reject that deed?

Mr. LITTLEFIELD. How was that?

Mr. COCKRAN of New York. Can there be any doubt that Judge Swayne must have reached some conclusion respecting the validity of the title to that lot before he rejected the deed?

Mr. LITTLEFIELD. I do not see that it involved that question. Through inadvertence the statement was made that the deed was sent to Swayne, but it turns out from the statement of Hooten and some others that the deed still remained in the hands of Watson and the agents for Edgar.

Mr. PALMER. Judge Swayne said it was sent, and who knows better than he?

Mr. LITTLEFIELD. The letter says right on this point that it was not sent.

Mr. PALMER. The letter says one thing and Judge Swayne says another.

Mr. LITTLEFIELD. I have no doubt Judge Swayne was mistaken.

Mr. COCKRAN of New York. But some one rejected the deed. The rejection of the deed discredited the title of the party that was selling.

Mr. LITTLEFIELD. It was being claimed by another party.

Mr. COCKRAN of New York. Now, that property, as I understand the question, came before him afterwards in litigation, and it involved the validity of the precise claim which he must have considered sufficiently serious to qualify him in rejecting the deed. Is that the fact?

Mr. LITTLEFIELD. How?

Mr. COCKRAN of New York. Was not the whole of this Cairo case involved in that very cloud which had caused him to reject the deed? Is that the fact?

Mr. LITTLEFIELD. Oh, no.

Mr. COCKRAN of New York. Is it not the fact that the precise question which was involved in this Florida McGuire case, and in which these gentlemen were attorneys—Paquet, Belden, and Davis—was the validity of this very claim which caused him to reject the deed?

Mr. LITTLEFIELD. Well, it is a fact that Edgar was made a party in the process, and no service had ever been made upon him.

Mr. COCKRAN of New York. I am not speaking of the process. I will admit that the process was a shaky transaction all through.

Mr. LITTLEFIELD. The gentleman does not understand the process to which I refer in my answer.

Mr. COCKRAN of New York. Perhaps not.

Mr. LITTLEFIELD. The process pending before Judge Swayne in the circuit court had made Mr. Edgar a party, but no service had been made upon him. Now, it does appear that Judge Swayne had any knowledge during any part of these negotiations of the fact that that lot, No. 91, was included in the description.

Mr. COCKRAN of New York. I assume that.

Mr. LITTLEFIELD. Now, the next thing that appears is this, that when Judge Swayne received notice that he could only get a quit-claim deed—there was some controversy about the Cairo heirs, who, I presume, are the parties involved in the Florida McGuire title—he returned the deed. That is all the record shows up to that stage.

Mr. COCKRAN of New York. Yes?

Mr. LITTLEFIELD. He did not say why he returned it.

Mr. COCKRAN of New York. I understand.

Mr. LITTLEFIELD. And what he did say when he came to court November 5 was that he had terminated the transaction.

Mr. COCKRAN of New York. I understand that.

Mr. PALMER. Why did he say he had terminated it? He said it was because the land was in dispute in his court.

Mr. LITTLEFIELD. No; he did not give that reason.

Mr. COCKRAN of New York. What I want to ask the gentleman from Maine is this: Assuming the circumstances which he describes now to have occurred in Rockland, Me., and the gentleman to have been attorney for the plaintiff to try the title to land, if he found the judge before whom the case was pending had himself negotiated a purchase of that land, and for some reason or other had refused to complete it, either because he thought the title was clouded or did not think so, would not the gentleman think a case had arisen for asking the judge to call in another officer to adjudicate the whole question?

Mr. LITTLEFIELD. When it appeared that the moment the judge learned that there was any controversy about it he repudiated it and rejected it, just exactly as an honest man would do; would I think then that the judge was not qualified to go on and try the case? That is your question?

Mr. COCKRAN of New York. How would you know that?

Mr. LITTLEFIELD. When the fact was that while the negotiations were going on the judge had not the slightest knowledge, nor the slightest idea——

Mr. COCKRAN of New York. Knowledge?

Mr. LITTLEFIELD (continuing). Had not the slightest idea that the real estate had any connection with it. Would I be so supersensitive as to think, when the judge did what he ought to have done, what any honest judge would have done when he took that course, would I think that was improper, and that he was an improper man to try the case before? I will say, No, I would not think he was an improper man to try the case before.

Mr. COCKRAN of New York. I am afraid the gentleman is not stating the case which is before this House.

Mr. LITTLEFIELD. Do you think he committed himself to anything when he declined to take the deed?

Mr. COCKRAN of New York. I do not know whether he did or not, but I assume that he did. I assume that he must have thought the cloud was good when he rejected the deed.

Mr. LITTLEFIELD. What did he commit himself to?

Mr. COCKRAN of New York. And if he had preconceived the very question at issue, or had acted as if he had done so, I would, as an attorney, most strenuously object to trying such a case before him.

Mr. LITTLEFIELD. Let me suggest this to my distinguished friend, that it does not involve any such determination or any such inference on the part of the judge. I am only giving you my idea about it.

Mr. COCKRAN of New York. The gentleman is discussing the mental attitude of the judge in this particular case, and I am speaking of the mental conditions which the judge's conduct may have produced in others. The judge had taken action, presumably, one way or the other upon this cloud. Attorneys were called upon to try that precise question before him, and, as I understand, called his attention to the fact that he had already taken some action on it, that he was not quite impartial for the trial of the case. Now, I ask, would not these attorneys be justified in taking strong measures to avoid trying the suit before a judge who, they had reason to believe, had already taken action one way or the other upon the precise question?

Mr. LITTLEFIELD. There is not a particle of evidence in the case that intimates even directly or indirectly, by any kind of narrow inference, that the judge had in any way passed upon that question in his mind at all.

Mr. COCKRAN of New York. He had rejected the deed.

Mr. LITTLEFIELD. Very true, but that left him entirely independent.

Mr. COCKRAN of New York. How does the gentleman know that? He may still have wanted the property.

Mr. LITTLEFIELD. Then the gentleman assumes that when the judge declined to have anything further to do with the deed—in the first place the gentleman is proceeding on a false hypothesis——

Mr. COCKRAN of New York. Perhaps I am.

Mr. LITTLEFIELD. The facts in this case show, so far as that is concerned, that he returned the deed without saying anything about it. No; he did not return it; he refused to take it.

Mr. SMITH of Kentucky. He never had it.

Mr. COCKRAN of New York. He had notice of the cloud?

Mr. LITTLEFIELD. No; he had no notice of the cloud.

Mr. COCKRAN of New York. Does not the letter notify him of a cloud upon the title?

**Mr. LITTLEFIELD.** There is nothing in this case to show that he knew it was connected with this case.

**Mr. COCKRAN** of New York. When that was made clear to him, was it not abundant reason to justify the attorneys in declining to go on with the matter before him?

**Mr. LITTLEFIELD.** I beg the gentleman's pardon. I may be obtuse, but to my mind it does not raise a scintilla of reason.

**Mr. PALMER.** Here is what Judge Swayne put in the record.

**Mr. LITTLEFIELD.** Oh, I know what he put in the record. I have called attention to it.

**Mr. PALMER.** I want to call attention to what is on page 324.

**Mr. LITTLEFIELD.** This is what he put in the record after he reached the court.

**Mr. PALMER.** On Tuesday, November 5?

**Mr. LITTLEFIELD.** No; this is the record he made November 11.

**Mr. PALMER.** I want what was on Tuesday, November 5.

**Mr. LITTLEFIELD.** The record says that on Tuesday, November 5, he made a statement of declaration, but what appears in the record is made on November the 11th.

**Mr. PALMER.** If the gentleman will read what he said Tuesday, November 5, on page 324.

**Mr. LITTLEFIELD.** Page 324 says this:

On Tuesday, November 5, 1901, at the time of the presentation of the said motion by plaintiffs, that the court recuse himself, he had then stated and now states that he never agreed to accept, nor ever accepted any deed to any portion of the said Cheveaux tract; that, as he stated, a member of his family, to wit, his wife, had, with money inherited by her from her father's estate, negotiated for the purchase of some city lots in Pensacola; that certain deeds in connection therewith had been sent to her in Delaware, one of them proving to be a quitclaim deed, and upon investigation and inquiry it was found that the property in this deed was a portion of the property in litigation in the suit of Florida McGuire v. Pensacola City Co. et al., and that thereupon, and by his advice, the said deed was returned to the proposed grantors, with the statement that no further negotiations whatever could be conducted by them in relation to this property, and they thereupon refused to purchase, either at the present time or in the future, any portion of the said tract.

Now, I will suggest this: That is that indicates any frame of mind on the part of Judge Swayne, it was a conclusion that was favorable and not adverse to the plaintiff.

**Mr. COCKRAN** of New York. I do not dispute that.

**Mr. LITTLEFIELD.** I do not think it indicates any state of mind adverse to the plaintiff. It is clear that as soon as he learned that there was any controversy he refused to have anything more to do with it. That does not pass on the validity of the cloud on the title. It does not say it is bad—it is only a statement on the part of the judge that when his attention was called to the fact that that fact might be in controversy in his court he simply repudiated the transaction and let it stand exactly as it did before.

**Mr. COCKRAN** of New York. I do not understand from the gentleman from Maine, nor do I from the record, that when this deed was rejected Judge Swayne had any notice whatever about the litigation. Surely, the gentleman from Maine does not mean to say that when this deed was returned this judge had any notice whatever that there was any litigation about the property pending in his court?

**Mr. LITTLEFIELD.** I do not think he did—in that court.

Mr. COCKRAN of New York. The rejection was the result of an exercise of his judgment concerning this cloud on the title alone?

Mr. LITTLEFIELD. No.

Mr. COCKRAN of New York. What else? It had no reference to any other transaction?

Mr. LITTLEFIELD. I do not see how he exercised any opinion upon the litigation when he rejected the proposal for further negotiation.

Mr. COCKRAN of New York. It is presumable that he passed to some extent on the value of the cloud; and if he did, he passed upon the precise question involved in the Florida McGuire litigation. I ask the gentleman from Maine if it is not presumable that the judge rejected the deed because there was in his mind some doubt about the validity of the adverse claim?

Mr. LITTLEFIELD. No; not at all.

Mr. COCKRAN of New York. On what does the gentleman base that?

Mr. LITTLEFIELD. On this statement of the judge himself. Will the gentleman hear it?

Mr. COCKRAN of New York. He said he investigated?

Mr. LITTLEFIELD. Will the gentleman hear me?

Mr. COCKRAN of New York. Certainly.

Mr. LITTLEFIELD. Now, I say that in my judgment it was not based upon any such reason. It was based solely on the reason, as he states here, that he afterwards discovered that it was in controversy in this litigation, and that is just the reason why he should eliminate it. That is the reason why he did eliminate it.

Mr. COCKRAN of New York. Where does it appear that he rejected the deed because title to the property was in controversy in his court? Where is that? I would like to have that pointed out.

Mr. LITTLEFIELD. Look on page 324—"upon investigation and inquiry it was found that the property in this deed was a portion of the property in litigation."

Mr. COCKRAN of New York. Then he did inquire?

Mr. LITTLEFIELD. He says he did; yes. The correspondence does not show what he did. It simply shows that he ordered the deed——

Mr. PARKER. Subject to the Cheveaux claim.

Mr. LITTLEFIELD. Yes. Here is his statement. He says right here that upon investigation and inquiry it was found that the property in this deed was a portion of the property in litigation in the suit of Florida McGuire v. Pensacola City Co., and that thereupon, and by his advice, the said deed was returned to the said grantor, etc., and the transaction was ended and repudiated.

Mr. COCKRAN of New York. Now, I ask the gentleman from Maine [Mr. Littlefield] this question: Suppose a sensitive judge, or he himself acting as judge, had been engaged in negotiations for the purchase of property and that he considered it desirable and had gone so far as to purchase it (for his wife, of course), but had then found a cloud on the title which would prevent his consummating the purchase; and suppose that shortly afterwards he found before him a litigation involving that same cloud and one of the parties called attention to the fact that he had already taken action on it in a matter of personal business, would he not consider himself bound by his sense of judicial propriety to ask another officer to pass upon the case?



Mr. LITTLEFIELD. No; I do not think so. I think this, that when a judge engaged in negotiations for property without any knowledge of its connection with the litigation, who, the moment he received the knowledge, repudiated the transaction, did just exactly what every honorable man would do. I think he acted entirely honorably in this case. That is what he ought to have done, and I think after he did it he was not subject to any criticism on the part of attorneys on either side of this case.

Mr. COCKRAN of New York. Will the gentleman allow one more question, and then I will leave the matter? Is there any disposition to attribute to these attorneys any other motive for seeking to oust this particular judge of jurisdiction than distrust of his impartiality growing out of his connection with this purchase? Does the record show any reason for attributing to these attorneys any desire whatever to oust Judge Swayne from jurisdiction in the McGuire case except such apprehension of prejudice and bias as they might have derived from the fact of his previous connection with the purchase of this property?

Mr. LITTLEFIELD. There would have been no objection on the part of the attorneys going into court like men and lawyers and honorable men in the profession and filing a petition setting out the facts as they understood them and then having him pass upon them and saving their rights.

Mr. COCKRAN of New York. That is not my question.

Mr. LITTLEFIELD. Yes; the gentleman is asking the question as to whether there is anything that influenced what these men did——

Mr. COCKRAN of New York. Oh, no.

Mr. LITTLEFIELD. Whether there was any other motive or purpose.

Mr. COCKRAN of New York. Yes; any other motive than apprehension on their part of bias or prejudice, because of his connection with this identical property.

Mr. LITTLEFIELD. Assuming they had any other motive——

Mr. COCKRAN of New York. I am only asking whether that is true. I am afraid the gentleman from Maine is giving me more information than I am prepared to digest at this moment.

Mr. LITTLEFIELD. Possibly.

Mr. COCKRAN of New York. What I want to know is whether this record contains any evidence that would indicate any cause on the part of these attorneys for their reluctance to try this question before Judge Swayne except what they knew of his connection with this purchase.

Mr. LITTLEFIELD. I don't know that it does.

Mr. GILLET of California. Yes; there is plenty to show that.

Mr. LITTLEFIELD. Oh, no. I go further.

I will ask this question. I will ask the gentleman whether if that be true and they wanted to raise that question on rumor, whether the way to raise it by honorable men was not by petition to the court upon the record instead of going outside and bringing suit in a State court for the express purpose of subjecting the court to embarrassment in that litigation, who was unfortunately charged with being connected with it?

Mr. COCKRAN of New York. I will answer that, Mr. Speaker, by saying I am not here to investigate the character of the attorneys at all, nor does it interest me. I only asked the gentleman questions for

this reason: That if this misconduct of the attorney—and I term it misconduct for the purpose of the argument—be the result of conduct which is at least questionable on the part of a judge, then the worse the conduct of the attorneys the graver the offense of the judge.

Mr. LITTLEFIELD. I only agree with the gentleman on part of the proposition. The gentleman calls this misconduct.

Mr. COCKRAN of New York. For the purposes of my question.

Mr. POWERS of Massachusetts. May I ask the gentleman from Maine whether, if it is true these lawyers had written Judge Swayne in October stating the fact that there was a rumor that he had purchased some part of this property, and stating that if that be true he ought to recuse himself and bring in Judge Pardee, or some other judge, to try the case—whether it is not true he took no notice of that application made to him at that time?

Mr. LITTLEFIELD. I will say to the gentleman from Massachusetts I do not know what the contents of that letter were. They wrote it. They wrote him, calling attention to this, and that is all the case shows. It does not show what they said, and the letter is not in evidence and nobody has testified as to its contents. It is a fact they wrote the letter and he did not make any answer thereto, and that letter was written and must have been written after the transaction was terminated and ended, and that fact could have been ascertained by the counsel by five minutes' investigation in the city of Pensacola, from Wason & Co., the agents for Edgar.

Mr. POWERS of Massachusetts. But the gentleman from Maine understands the letter has reference to his interest in this piece of property.

Mr. LITTLEFIELD. I have no doubt of it.

Mr. POWERS of Massachusetts. Do you not think the fact that he did not answer that letter made them suspicious somewhat in regard to his relationship to this piece of property?

Mr. LITTLEFIELD. There are two constructions to put upon that. Of course it depends upon the character of the letter and the impression that was made upon Judge Swayne. It may or may not have justified that construction.

Mr. COOPER of Wisconsin. That very letter is testified about on page 116, at the top of the page:

The rumors were so definite and of such form as to leave no doubt in the minds of counsel of the purchase. So, on the 19th day of October, Judge Paquet and myself addressed a letter to Judge Swayne requesting him to recuse himself, for the reason I have just stated, being a party at interest; to recuse himself and notify Judge Pardee, so he could assign a disinterested judge at the November term. He never replied to the letter at all, and, so far as I know, never informed Judge Pardee, the circuit judge, of the circumstances surrounding himself and the case. The November term I was sick—had an attack of facial paralysis—but our clients telegraphed me to come over, though I could not appear before the court. Later, on the 9th or 11th, he replied to our communication, in which he declined to recuse himself, and went on to state he had not purchased the land, that a relative of his had purchased the block of ground in question, and that he had got hold of the deed and returned the deed to the vendor of the deed. The vendor of the deed was C. H. Edgar, a party defendant in the suit in question, and he being a party defendant, made Judge Swayne a party defendant through him, as we supposed. He stated that the deed had been sent on to this relative at Guyencourt, and he returned it, as he had no interest whatever. The following day, without any reference to the case whatever, the judge called up this, and in his statement he said: "The relative I referred to yesterday, or the day before, is my wife." He went on to say that his wife had paid for it from funds from the estate of her father in Delaware.

Mr. LITTLEFIELD. Well, now, let me ask the gentleman from Wisconsin—

Mr. COOPER of Wisconsin. So the letter did contain the substance of subsequent testimony that they wanted him to recuse himself because he was the party in interest and they had supposed that he had purchased it; that for almost 30 days he refused to reply, and then wrote a letter saying he was not a party and that he would not recuse himself, but that a relative had the deed, which had been sent to him, the judge.

Mr. LITTLEFIELD. Oh, no; that was in November, 1901. The Judge wrote no letter.

Mr. COOPER of Wisconsin. It says that on the 19th day of October they wrote their letter, and that on the 9th and 11th he replied to their communication, in which reply he declined.

Mr. LITTLEFIELD. That is in November. That is the day he made the declaration in court. The record shows it. Does the gentleman think—

Mr. COOPER of Wisconsin. He did not reply to the letter in which they asked him to recuse himself because he had purchased the land.

Mr. LITTLEFIELD. As a matter of fact, he had not purchased the land. The record in this case shows that the transaction had not been consummated, the deed had never been delivered to her, and as it had never been sent by Hooten he notified Hooten not to send it, that he was not the purchaser, and had nothing to do with the transaction when he received the letter; and now the suggestion is that because they wrote the judge—I do not know that all the courtesy due between counsel and judge was followed—because they wrote the judge and he did not reply to them, they could sue him. Does a failure of the judge to reply justify the bringing of a groundless suit?

Mr. BOWIE. The gentleman recognizes the fact, does he not, that as a presumption of law that letter is in the possession of Judge Swayne?

Mr. LITTLEFIELD. I beg the gentleman's pardon. I did not hear.

Mr. BOWIE. Does the gentleman recognize the fact that that letter is presumably in the possession of Judge Swayne, at least until the contrary appears, and that if it did not contain the statement quoted in the testimony read by the gentleman from Wisconsin [Mr. Cooper] that Judge Swayne had it in his power to produce the letter?

Mr. LITTLEFIELD. True; unless he has lost the letter. But it did not appear. I do not think it is a matter of any consequence. The only connection that letter can have with the case, and the only weight to which it is entitled, is as to whether it furnishes a foundation for their litigation on the ground that because the judge did not reply, why, then, forsooth, the attorney had the right to sue the judge.

Now, if it is entirely agreeable, I will suspend, because I can not conclude my remarks to-night.

[Friday, January 13, 1905.]

Mr. LITTLEFIELD. Mr. Speaker, in resuming this morning, inasmuch as in about 200 minutes yesterday afternoon I was interrupted—some have estimated something like 94 or 95 times—about once every 2 minutes—not that I make any complaint now of the interruptions—I hope that the Members of the House will not feel that I am churlish

if I suggest this morning, while concluding what I have to say, that I decline to be interrupted, and I trust the Members of the House will be kind enough to give me that indulgence under the circumstances.

I find on conference with the gentleman from Pennsylvania [Mr. Palmer] this morning that he feels that I have done him an injustice in the manner in which I stated the facts from my point of view with reference to the inaccuracy of the record. I did not intend to do so, and I do not intend to do so now, and I cheerfully state, or will undertake to state, the information given to me by the gentleman from Pennsylvania [Mr. Palmer] this morning.

It is true the record in this case is not a correct print of the testimony of Judge Swayne before the committee. Judge Swayne testified, I think, on the 18th of March, and he appears as so testifying in the record. There was an adjournment for a week. At that time he argued the case and made some statements as a witness. There is no report of what occurred on that second meeting. The fact that a portion of his testimony that appears in the report of the committee does not appear in the record is also true.

It is a fact that the gentleman from Pennsylvania [Mr. Palmer] and the gentleman from California [Mr. Gillett] were instructed by the committee to prepare the papers involved in the case for publication, and they had charge of it. I understand from the gentleman from Pennsylvania that the argument that Judge Swayne made was inadequately reported, and that it was left out of the record at the suggestion of the gentleman from California, and that inadvertently the testimony given by Judge Swayne at that same time was also left out. Have I stated it correctly?

Mr. PALMER. That is right.

Mr. LITTLEFIELD. Now, I ought to say this, which I think the gentleman will bear me out in saying, that the first knowledge that I had that this was the condition of things from the standpoint of the gentleman from Pennsylvania [Mr. Palmer] was when I met him about half an hour ago in the committee room this morning. That is correct, is it not?

Mr. PALMER. Yes.

Mr. LITTLEFIELD. Now, if the gentleman from California [Mr. Gillett]—inasmuch as I am making this explanation, and I desire to make it with perfect frankness for the benefit of the gentleman from Pennsylvania—has any statement to make in relation to the transaction I will, for the moment, yield and allow him to make this statement.

Mr. GILLETT of California. Mr. Speaker, all I have to say in relation to this matter is that when the statement of Judge Swayne was taken before the committee and was transcribed, it appeared to be very inaccurate and garbled, so much so that it was the opinion of both myself and Mr. Palmer that it was not a fair statement of his side of the case, and that a fair statement ought to be made, and that that statement should not be published. I find that some part of it has been published, and the part that was in Mr. Palmer's report, read by Mr. Littlefield yesterday, was a statement that he made at that time, and the evidence that gave at the time, and is correctly stated in Mr. Palmer's report, although it was not edited into the record itself.

Mr. LITTLEFIELD. So that under these circumstances I think the suggestion that I made to the House is well founded that the well-considered statement made by Judge Swayne when he appeared in the last instance before the committee is the only statement that in fairness, equity, and candor the House can properly rely upon in reaching a conclusion so far as he is concerned. That is to say, he is entitled to the fair and full weight of the statement that he made before the committee just preceding this session of the House. Whether it is truthful or not is, of course, another thing.

I desire now to make another statement before I proceed with the discussion, and that is that on an examination of my files during last evening after the adjournment, looking over some memoranda that I had, I find that the suggestion made by the gentleman from Massachusetts as to the significance of the language of Judge Belden when he referred to the fact that the suit against Edgar disclosed that it was for commission on a sale to Mrs. Swayne, is not entitled to the consideration I gave it, because my memorandum shows, although it does not appear in the record—and there is no evidence in the case to show it—that the suit against Edgar was brought October 15, if I remember right, but that the declaration in the suit was not filed until December, which was after the suit was brought on November 9, 1901, and Judge Belden is entitled to have this stated to the House, because he could not then have known of the contents of the declaration.

I think I ought in frankness to make that statement so that the House will appreciate the situation. While I am on this line I wish to call attention to this fact: The gentleman from Pennsylvania [Mr. Palmer] in his speech yesterday, which appears in the Record this morning, referring to Judge Swayne, among other things said:

He said, "You are a stench in the nostrils of the community."

The gentleman from New York [Mr. Cockran] then made this inquiry:

Is there any doubt, dispute, or question anywhere that this language which the gentleman has quoted was used by Judge Swayne on this impeachment proceeding?

Mr. PALMER. No; I do not think there is any doubt about it or dispute about it.

Mr. CLAYTON. I can give the gentleman the page.

Mr. LITTLEFIELD. Mr. Speaker, I do not understand that he did use that language. It is absolutely disputed.

Mr. PALMER. Very well, now who disputes it?

Mr. LITTLEFIELD. I do.

Mr. PALMER. Yes. Was the gentleman there?

Mr. LITTLEFIELD. Well, now, I will say this to the gentleman: he will hear me when I get around to the discussion.

Mr. PALMER. I am asking the gentleman a plain question. The gentleman says that he disputed it, and I ask him if he was there.

Mr. LITTLEFIELD. No.

Mr. BUTLER of Pennsylvania. Did the judge in his statement admit it?

Mr. PALMER. Yes.

Now, I will read from Judge Swayne's statement:

I did not indulge in any tirade, abuse, or epithet toward them, merely contenting myself with simply stating the case briefly and imposing sentence.

I think it is due to Judge Swayne to have the record show that he did deny using that language. The recollection of the gentleman from Pennsylvania [Mr. Palmer] at that time was evidently at fault.



Mr. PALMER. Where does the gentleman find that?

Mr. LITTLEFIELD. I find that on page 583, near the bottom of the last paragraph. He says:

I used no abusive or inappropriate or unnecessarily harsh language toward them in pronouncing sentence. I did not indulge in any tirade, abuse, or epithet toward them, merely contenting myself with summing up the case briefly and in imposing sentence.

I do not think, in fairness to Judge Swayne, I ought to allow to go unchallenged an assertion made by my distinguished friend the gentleman from Pennsylvania [Mr. Palmer], even though it may be inadvertently made.

Mr. PALMER. I think there is another place where Judge Swayne made some observations on the subject. Now, he said he used no abusive or inappropriate or unnecessarily harsh language. That would seem to indicate that it was a question of judgment whether the language he did use was unnecessarily harsh or whether it was inappropriate or abusive. The witnesses who testified as to what occurred on that occasion gave what he said. Now, it is a question of judgment whether that was unnecessarily harsh or abusive. From my standpoint it would seem that he said the conduct of these men was a stench in the nostrils of the community. I think that what he said was unnecessarily harsh and abusive. Perhaps he did not consider it in that light. I do. I think he did not dispute that he used the language. I do not think now that he disputed it.

Mr. LITTLEFIELD. Mr. Speaker, I do not propose to argue the question. The gentleman did state that the judge in his statement admitted using this epithet.

Mr. PALMER. I said he did not deny it.

Mr. LITTLEFIELD. Now, I read from the record, which shows the judge did deny it, on page 583. It was a very gross epithet quoted by the gentleman from Pennsylvania; it was an extract from the testimony of Mr. Davis, and Judge Swayne says:

I did not indulge in any tirade, abuse, or epithet toward them.

I do not contend that that establishes the fact, but it does establish the fact that Judge Swayne did deny using that epithet, and in justice to the judge that ought to be stated so that the record will show the correction.

Now, I wish to call attention to another inadvertence on the part of my distinguished friend. He says, "If he had the right and he imposed an unlawful sentence, he ought to be impeached. If he did not have the right and imposed it in ignorance of the law, or did it maliciously and for bad motives, he ought to be impeached. That catches him going and coming." He further on says, "I have got this to say of Judge Swayne; he had the manliness and the courage to stand up and not plead the baby act as those who apologize for him will do. He did not come here and say 'I was ignorant,' but he came and said, 'I did know the law, and I am within my rights, and I punished these men as I had a right to do.' That is what he said." This relates to the sentence imposed by the judge of both fine and imprisonment. It is proper for me to call attention to the fact that on page 594 Judge Swayne made this statement: "That I imposed both fine and imprisonment was a mistake of law which I was not cog-

nizant of at the time." If I can read the English language the judge does say he was not at that time cognizant of that law. Later I will discuss the weight and effect of it. I merely suggest it here for the purpose of having the record disclose exactly what the facts were.

Now, Mr. Speaker, having made these preliminary suggestions, I am going to make a few closing suggestions, and I hope I will have the attention of the House, as to the Belden and Davis incident. I do not think that it matters very much so far as the action of Judge Swayne was concerned on the 12th of November, 1901, whether he had placed himself in a position before that where he ought to have recused himself or whether he was in a position where they had any suspicion relative thereto. The question of his action on the 12th of November, 1901, involves a very simple, naked proposition. Did Judge Swayne under these circumstances, on the facts as they appeared before him at the contempt hearing, enter a proper judgment and reach a proper and rightful conclusion? Or I might go further and say, Did he reach such an improper conclusion or an unjust result as would demonstrate beyond a reasonable doubt that he was corruptly exercising his position as judge in connection with those two attorneys? Now, although the discussion has taken a wide range and the House has indulged me very largely in discussing it in detail, it is really involved in a very narrow compass, and I submit that this is a fair analysis of it.

The charge against Belden and Davis on the 12th of November, 1910, was that they had brought a suit in contempt of court. The statement in the allegation filed in court was that they were in court on the 5th of November, 1901, and heard the judge in question say that he had no connection with the transaction, so far as the charges in regard to lot No. 91 were concerned, but that the transaction was absolutely terminated. Now, what took place at that hearing upon which Judge Swayne had to pass? This: First, Belden and Davis filed their answer. It was not on oath. It did not prove anything; it did not establish anything; it was not evidence; it simply raised an issue. In that answer, as I have already said, they did not say that they had any right to bring the suit; they did not say they were not in contempt; they did not say that their acts were in good faith; they did deny in that answer that they heard the statement made on the 5th of November, 1901, but they did not swear to that denial. It was simply a denial, and it simply raised an issue. It is conceded, I think, in this case that neither Davis nor Belden were witnesses at that hearing, so that this matter stood before the judge with these allegations upon the record made upon his own knowledge and with only this answer thereto, simply a pleading filed by Belden and Davis absolutely unsupported by their own testimony, because they were not witnesses.

Now, what would the judge hold under those circumstances? When counsel came in and simply plead without making the plea on oath—when they declined to testify to the truth of the allegations? That is the first proposition involved in it. It seems to me, stopping right there, that any intelligent judge—with a proper appreciation of the weight of testimony, when they stood mute and did not either directly or indirectly attempt to establish the truth of their pleading, either by their oath to the pleading or testimony of witnesses—any intelligent judge must have held that the allegations

upon the record of the court and the statement made by the judge himself were true.

That is the statement of the facts exactly as they appeared in the case thus far. I have already called the attention of the House to the fact that this answer to the charges shows on its face that it was untruthful, inasmuch as the record to which the answer refers discloses the fact that Judge Swayne had repudiated this transaction; and yet the answer states, referring to that record for their knowledge of the facts, and that record disclosing the repudiation—I say the answer states that they had no knowledge of the repudiation, which is a denial of the truth of the record to which they referred for their information, and must have satisfied Judge Swayne that they were acting at least disingenuously in that respect.

There is another phase of that answer which is significant and interesting in connection with the facts in this case. I will read it. They say that they have no knowledge of its repudiation, and “as the negotiation for the property named in said deed was made by Mrs. Charles Swayne in her individual right, that no act of the said Hon. Charles Swayne would repudiate or render null and void any transaction made by Mrs. Charles Swayne with her own property.” Now, mark the significance of this. Until this answer was filed the complaint in this case was, and it has been made upon this floor, that Judge Swayne was the principal and his wife the incident; that he conducted the negotiations; that he connected himself with this transaction; that he was the party that was involved in the property that was connected with this litigation. But when we reach this answer, what happens? Why, Mrs. Swayne is the party individually interested and Judge Swayne has no power to control the situation.

Take the language used by these attorneys to the effect that no act of the said Hon. Charles Swayne would repudiate or render null and void any transaction made by Mrs. Charles Swayne concerning her own money or property, and yet the whole complaint had been that Judge Swayne had conducted the negotiations, had created the conditions. And here is the assertion in this answer that no act of his could render null and void the very act he was charged with doing and of which complaint is made. Then the gentleman from New York [Mr. Cockran] very properly is disturbed more or less, of course, by reason of the fact that these negotiations occurred prior to that time. And here is an illustration of the disingenuousness of the answer filed by the counsel charged, and that is the assertion—while they complained of the judge, while they insisted that the judge himself created this condition, in the answer they say in substance he created a condition that he could not terminate. Before this answer was filed the judge was the aggressor, and after the answer was filed the wife was the aggressor. Before the answer the judge was the principal and his wife the incident; when the answer is filed Mrs. Swayne is the principal and the judge is absolutely eliminated from the equation.

Stop just for a minute and think of this proposition. Here are counsel coming into court for the purpose of justifying their action in bringing a suit against Charles Swayne on the ground that he had title or some color of title. How do they justify it? They justify it by the assertion that Mrs. Swayne had the title in her individual

right, and that Judge Swayne had no power to control it or interfere with it. So that we have, Mr. Speaker, in this case pending before Judge Swayne on the 12th of November, 1901, the fact that they did not deny the allegations in any way that would make the denial evidence, the fact that the answer was disingenuous, that it was inconsistent, and the allegations that they had no knowledge of the repudiation of the transaction, when the document to which they referred for knowledge stated the exact contrary.

The fact is that this answer was a greater contempt of court than the bringing of the action itself, adding insult to injury. Then we have the further fact that Louis Paquet, the leading counsel, afterwards filed in December his written admission that he was guilty of contempt; that his actions were such as justified the court in so believing. I submit, then, as a fair proposition, when Judge Swayne had the case pending before him on November 12, 1901, there was no evidence to sustain the case of the respondents, except the testimony of Blount and Fisher. I do not know what Blount testified, but I know that Blount testified in this case, in this record, that the counsel for the plaintiff were present when the declaration was made on November 5, 1901, and while the case does not disclose what he testified to before Judge Swayne, it could be fairly inferred that he testified to that, perhaps. But that is all the evidence there was.

Did Judge Swayne, in this instance, exercise wrong judicial discretion when he reached the conclusion that any judge must have reached? It is perfectly idle to suggest that the case of Florida McGuire was discontinued on the following Monday, because the contempt, if any was committed, was committed on the Saturday when the other suit was brought, and notice of the bringing of the suit was sent to the newspapers at 11 o'clock that night for the purpose of having it made known to the public of Pensacola, Fla., for the purpose of embarrassing the judge in the exercise of his judicial functions and discrediting and disgracing him. It was stated that a "new move" had been made in that Florida McGuire case, the very case pending before the judge. This contempt was committed before, and the fact of the discontinuance of the case afterwards does not relieve the situation, except to illumine the intent and purpose of the parties.

Mr. HENRY of Texas. Will the gentleman permit me to ask him a question?

Mr. LITTLEFIELD. I do not wish to appear at all churlish about it.

Mr. HENRY of Texas. It is simply this: If you mean to say that Judge W. A. Blount testified that Davis and Belden were present in court on November 5, 1901, when Judge Swayne made that statement from the bench? I so understood you to say.

Mr. LITTLEFIELD. I think he does, and I will have the gentleman from California [Mr. Gillett] look it up and call your attention to it. Judge Blount, with the counsel for the plaintiff, was present in the court when the statement was made in court by the judge.

When Judge Swayne opened court at that term, or a day or so thereafter, the counsel for Florida McGuire being in court——

Will the gentleman from Texas listen to the answer, or was the interruption made for the purpose of disturbing "the gentleman from Maine"?

Mr. HENRY of Texas. I beg the gentleman's pardon.

Mr. LITTLEFIELD. I was trying to read to the gentleman from Texas——

Mr. HENRY of Texas. You said you would have Mr. Gillett look it up. I had no intention of disturbing the gentleman.

Mr. LITTLEFIELD. The gentleman's statement is perfectly acceptable. I will read to the gentleman from page 136 of the record:

When Judge Swayne opened court at that term, or a day or so thereafter, the counsel for Florida McGuire being in court, he said he had received a letter from some of them asking him to recuse himself because he had purchased a piece of land which was a part of the land embraced in the Florida McGuire case. The judge stated that he had not purchased any such land; that his wife had, through him, negotiated for the purchase of a block of this tract, but when the deed was sent to close the trade he saw it was a quitclaim, and he asked why a warranty deed had not been given. The reply by Watson & Co., Edgar's agents, was that the reason a warranty deed was not given was because this land was in controversy in this suit, and he did not care to give a warranty. Judge Swayne learning this caused the deed to be returned, and that while there was not a formal application to recuse himself, he would try the case.

Now, let me say this——

Mr. HENRY of Texas. That is the statement that counsel was present, but it did not say Belden was present.

Mr. LITTLEFIELD. The only counsel for Florida McGuire at that time were the lawyer Paquet, Judge Belden, and whether or not Davis was in the case is a question in controversy. Judge Belden did not reach Pensacola until the 7th or 8th of November, so that Judge Belden could not have been present.

Mr. HENRY of Texas. I understood the gentleman to say that Davis and Belden were present on that afternoon.

Mr. LITTLEFIELD. If I so stated it was an inadvertence.

Mr. HENRY of Texas. Davis was not on the docket until the 11th of November, and Belden was sick in his hotel in Pensacola at that time.

Mr. LITTLEFIELD. The record shows, and I am obliged to the gentleman, from the testimony of at least three witnesses that Mr. Davis was before the court during the whole week, conferring with the witnesses, according to the testimony of Mr. Paquet himself. It does say Belden had not reached there. Mr. Paquet had been there the whole week, and Mr. Davis's name was not entered on the record until the 12th of November, 1901. Mr. Keyser testifies that before that time the counsel for Florida McGuire wrote the judge asking him to recuse himself, and that the counsel were Davis and Paquet. Paquet says that Davis was about the courthouse all that week, conferring with clients, and the clerk says he conferred with him before the suit was brought, and conferred with him about the witnesses. I think I have stated that fairly and fully.

So that Davis and Paquet—I thank the gentleman if I have inadvertently stated the two names; it is all the same—counsel for Florida McGuire, were present in court and heard that declaration.

The gentleman from Pennsylvania [Mr. Palmer] called attention to the record yesterday, for the purpose of showing that Judge Belden testified that he did purge himself of contempt. The inference would be that he did, either by his answer or by his testimony in court. I have shown that he did not do it by his answer; that he



did not undertake to do it by his answer. I want to show now by a fair statement of this testimony that he did not intend to state that he did. I read from the same page and the same paragraph from which my friend read, page 116.

Q. Did you file your answer—purge yourself?

Now note the answer:

A. Yes; there were three of us—Paquet, Davis, and myself.

That shows of itself that he did not comprehend the question. He did not understand what he was asked. There is no pretense that Paquet joined in the answer, and there were not three of them in court. He said:

Yes; there were three of us—Paquet, Davis, and myself. We were condemned to pay a fine of a hundred dollars, 10 days in the county jail, and disbarred from practicing for two years in this district.

It shows that the whole answer is in a sense unresponsive, because Paquet never was sentenced to anything. Take his language literally—undoubtedly the gentleman is misreported—take his language literally, and it would appear that Davis and Belden and Paquet were all sentenced to fine and imprisonment. It shows that the answer was inadvertent; that he did not appreciate the situation.

Now, let me go on.

Q. Were you sentenced?—A. Yes.

Then he goes on and speaks about the sentence, being committed to jail, and ends up his next answer by saying:

So, there being no relief, I, in my paralyzed condition, served out my time in the county jail.

Then comes the next question, counsel evidently desiring to make the matter certain:

Q. You said you filed answer purging yourself of contempt?

Going back to the question that he had inaccurately and incompletely answered, which on a superficial examination possibly might justify the conclusion made by my distinguished friend from Pennsylvania. What did he say in answer to that question?

A. Oh, no; I knew I had committed no offense, and I did not apologize. I would have stayed in jail until now before I would have apologized.

That is his answer to the express question as to whether he filed an answer purging himself of contempt.

Mr. PALMER. Do you think there is any difference between a man purging himself of contempt and apologizing for contempt?

Mr. LITTLEFIELD. Yes; purging himself—but he neither purged himself nor apologized.

Mr. PALMER. Well, he swore that he purged himself, and I suppose I had a right to take that testimony as correct, notwithstanding—

Mr. LITTLEFIELD. I beg the gentleman's pardon, I am arguing this case. I beg the House to take notice whether I did not allow the gentleman from Pennsylvania to continue his remarks, filled as they were, in my judgment, with erroneous statements—and I am drawing it mildly—about the record in this case, without a single interruption, without a single question. Now, of course, if the gentleman

insists, he will have to participate in the argument that I am making this morning.

Mr. PALMER. When you make an attack on me, I suppose I have a right to insist, haven't I?

Mr. LITTLEFIELD. Well, if the gentleman desires to do it he may insist. I call attention to the fact that I have made no reflection on the gentleman. I have read the record which he relies upon for the purpose of showing that Judge Swayne said he purged himself, and I say that that record discloses to any fair-minded man that he did not intend to swear that he purged himself, and I leave that record just exactly as it stands. Of course, I say, if the gentleman insists, I shall have to tolerate his interruptions as we go along.

Under these circumstances, with the entire absence of evidence—and I want the House to bear this in mind, that the testimony Judge Belden gave in this case did not appear before Judge Swayne. There was no suggestion before Judge Swayne that they had even this rumor as a basis for their action in bringing that suit in the State court; not an intimation in this case that anything of that sort even was presented. Do not confuse the testimony given by Belden here with testimony that you may think was given before the judge, because it was not so given. The record shows that no testimony was given in that case by either Belden or Davis.

Under these circumstances what was the judge compelled to find upon that question, with that written notice in the newspapers before him, with the knowledge that it has been stated in their presence that they were present and heard his statement on the 5th of November, 1901? No fair-minded and intelligent judge, I submit, could have reached any other conclusion. And then I add to that this suggestion: The fact that the leading counsel who originated the suit, who knew its purpose, who wrote the newspaper article and procured it to be printed, indicating the reason why the suit was brought and the purpose that was behind it—when that leading counsel came into court later, over his own signature, and stated that the judge had a right to believe that contempt had been committed, how can any fair-minded man say that Judge Swayne abused his judicial discretion when he found that the fact was that they were guilty of contempt as charged?

Of course this is distinct from the question of sentence, but I am trying to establish the proposition that was put before the judge when he reached the conclusion that the men were guilty of contempt. I think that is a fair statement of the facts in this case, and upon that I say that, in my judgment, beyond a reasonable doubt, the judge was bound to maintain the proper dignity of his court and a proper administration of justice, and that the attorneys under these circumstances were properly disciplined for the act that they had committed.

The next question is as to the sentence, and a little later I am going to discuss the question of jurisdiction. The sentence was first disbarment for two years, then imprisonment for 10 days and \$100 fine. What happened? Why, Mr. Blount, one of the leading attorneys there—and, by the way, I should say here that the record does not sustain the proposition that Judge Swayne agreed with Blount that these proceedings should be brought in the sense of their agreeing together for that purpose. It does show that Blount had a conver-

sation with the judge, and the judge called his attention to it, and that Blount told the judge, in substance—it is not quite clear upon that point—that a contempt had been committed, and Fisher agreed with him, and he distinctly says that he does not think—that is as strong as he states it—he does not think that it was brought at the request of Judge Swayne.

My friend from Pennsylvania is disturbed by the fact that he was an improper person to bring the proceedings for contempt. It was in a case that he was defending in which the contempt had been committed, and it was proper for him to call the attention of the court to it. He had a legitimate interest in the controversy that led him to take it up as a friend of the court. I submit that in all fairness. No counsel outside would have been expected or tolerated to interfere or inject himself into that controversy for the purpose of protecting the rights of the court or the parties to the suit. It was the duty of the defendant's counsel to take care of that situation. On the question of sentence, Judge Swayne says that he did not know what the law was at that time. He immediately, at the suggestion of Blount, revoked the sentence in reference to the disbarment.

It is true, as the gentleman has suggested, that every judge is presumed to know the law. It is true that every other man is presumed to know the law. Every lawyer is presumed to know it, and every one of the eighty millions in this Republic is presumed to know it, and there is no presumption that places a judge under conditions different from any other citizen. What does it mean? It means that if any judge or citizen offends against a statute it is no answer to say that he did not know what the law was, because the law presumes that he did know it. It would be puerile to contend, it would be drivel to pretend, that the presumption under these circumstances laid a foundation upon which could be predicated a vicious or malicious intent upon the part of a judge who knowingly acted with actual knowledge of the law.

There are about five or six thousand sections of the Revised Statutes of the United States. I am presumed to know them? Do I? Does any man know them? Of course not. Still I am presumed to know. If you wanted to project into a case a wicked intent on the part of the gentleman from New York, would it not be necessary in the first instance to show that the gentleman had actual knowledge, as distinct from constructive or presumptive knowledge? It does not seem to me, Mr. Speaker, that that question admits of debate.

Mr. Smith of Kentucky rose.

Mr. LITTLEFIELD. I hope the gentleman will pardon me; I can not yield. It does not seem to me that that question admits of reasonable debate—a presumptive knowledge; a constructive knowledge as a foundation of corrupt action. Now, the judge ought to have known, it is said. That may be true. I think the judges in many instances ought to know much more than they apparently disclose in reaching the conclusions which they sometimes do. That depends somewhat upon the point of view. The judge ought to have known, and by the same token Blount should have known, and Belden and Davis ought to have known. Did anybody make any suggestion at the time? Blount knew that he could not disbar, and he called attention to it, and the judge withdrew it. If Blount had known that he could not fine or imprison, do you not suppose that

Blount would have suggested it? If Belden and Davis had knowledge that he could not fine and imprison, would not either Belden or Davis have suggested it?

It was open to them to make the suggestion. No one suggested it and no one intimated it, and I have no doubt as a matter of fact that every person connected with that transaction at that time believed that the judge probably had that authority. I presume it is entirely probable—it does not appear—that this action was taken without any examination of the statute under which it turns out later the action could only have been taken. Now, those are the facts and circumstances with reference to this sentence, a sentence, in my judgment, mild under the circumstances, taking into account the action of the attorneys in the beginning and their repetition of the action when they filed their answer before the judge. That is all I have to say on the question of the character of the sentence. It was not right, but no man was oppressed thereby. Neither Belden nor Davis were oppressed thereby. They brought a petition for habeas corpus, and when it went before the circuit judge the judge decided that this cumulative sentence could not be imposed; that the statute was alternative in its character, and I think that is very clear, and he simply remitted or he gave them the alternative that they might take either fine or imprisonment. Judge Belden elected to take imprisonment. Mr. Davis elected to pay his fine, and that is the end of the sentence. No man was oppressed in connection with it.

Mr. PALMER. Were they not both imprisoned?

Mr. LITTLEFIELD. The case is not quite clear about that, but I think they were. I think Mr. Davis went to jail for two or three days. I have looked the case over very carefully to ascertain that and I am not quite certain. I think it is fair to state that on the whole that is the proper conclusion to draw from it, although the evidence does not disclose the details; but they had the election and they were relieved of the embarrassment of erroneous sentence the moment they reached the other judge. Now, my distinguished friend the gentleman from Pennsylvania [Mr. Palmer] says that in 1831, under circumstances disclosed by his researches, the Congress of the United States defined the crime of contempt in a statute that contained two sections or enacted legislation with reference to this subject matter—I do not quite correctly state it when I say it was defined in both sections—one section defining contempts and the circumstances and conditions under which a United States judge could fine persons guilty of contempt and punish therefor, and the other providing for certain offenses connected with United States courts.

My distinguished friend says that this offense that Belden and Davis had committed, if they committed any, was an offense that was cognizable under the second section, and that they should have been proceeded against by indictment and prosecution thereunder. Now, I am not going to take the time to discuss that. Why? Because this case that was pending before Judge Swayne on habeas corpus went up before Judge Pardee, and Judge Pardee and Judge Shelby and Judge McCormick all agreed in an opinion upon the question as to whether or not Judge Swayne had jurisdiction to hear and determine a contempt committed under these circumstances, raising the precise question of jurisdiction. I submit this: If those three

judges sustained Judge Swayne it would be idle for this House to say that in reaching that conclusion Judge Swayne had acted unwarrantably and was subject to impeachment, because Judge Shelby and Judge McCormick and Judge Pardee were passing upon it coolly and deliberately.

Judge Swayne passed upon this question, of course, under circumstances where there was more or less feeling between the parties. That can not be ignored. If he erred in the law, so far as that is concerned, why, he would be entitled to consideration on that account, but these three judges passed upon it dispassionately and coolly and disinterestedly, and I want to say to the House that these three judges absolutely sustained the assumption of jurisdiction by Judge Swayne. Whether their decision will stand the test of analysis I do not propose to argue. I do know that there are numerous well-considered decisions in the Federal courts where that precise point is held and the precise proposition sustained that is exactly analogous to this case pending before Judge Swayne. But let me read just exactly what these three judges say in connection with this case:

The relator is an attorney and counselor of the United States circuit court for the northern district of Florida and as such one of the officers of the court within the intent and meaning of the above statute. As such officer he was and is charged with conduct in and out of court which, if accompanied with malicious intent—

Now, mark you, the record in this case was before these judges. They knew just what the attorneys were charged with—the bringing of this suit in the State court—and all the details connected with it were before these judges. To continue, the court says:

As such officer he was and is charged with conduct in and out of court which, if accompanied with malicious intent, or if it had the effect to embarrass and obstruct the administration of justice, was such misbehavior as amounted to a contempt of court—

Now, mark the language—

if accompanied with malicious intent, or if it had the effect to embarrass and obstruct the administration of justice.

Again:

To hear and decide whether relator were guilty of such contempt, and if found guilty, to punish him for such contempt, was clearly within the jurisdiction of the court, and the court having exercised such jurisdiction and found the relator guilty of contempt, its finding against the relator can not be reviewed on habeas corpus. (In re Davis, 112 Fed. Rept., 139.)

That is to say, they could not go into the merits, but they distinctly held that he had jurisdiction; he had the right to hear and he had the right to determine. He is charged here by my distinguished friend with wrongfully hearing and wrongfully determining, and the articles were drawn for the purpose of covering that express proposition. The gentleman, I suppose, if he reaches another tribunal, proposes to hold the judge upon one or the other of these propositions: First, that he had not jurisdiction, that he wrongfully heard and he wrongfully determined, and, second, that he wrongfully imposed sentence, having so determined. Three judges say that he rightfully heard. They do not say whether he rightfully determined, because they do not go into the merits, but he had jurisdiction. Would it not be idle for this House, with the concurrence of three circuit judges—not the ultimate tribunal, not the Supreme Court of the United States, to be



sure—would it not be idle for this House to undertake to say that this judge did usurp his jurisdiction, under these circumstances, beyond a reasonable doubt? Would that proposition stand before a disinterested tribunal? It seems to me not.

I believe that this charge has absolutely no foundation to stand upon.

O'NEAL CASE.

I come to the O'Neal case. What is the O'Neal case? The O'Neal case concerns a trustee in bankruptcy. Mr. Greenhut at one time was a director of the American National Bank in Pensacola. Mr. O'Neal was likewise a director and also the president. During the course of the business of that bank they negotiated a loan and received security therefor amounting to \$13,000 on the face of the loan. There is some question about whether the security was worth \$13,000. A little later, and before any suit was brought, that loan, with its security, was transferred to a director of the bank for \$10,000. Later Mr. Greenhut ceased to be a director and he became a trustee in bankruptcy of a Mr. Moreno, who negotiated the original loan, or whose wife negotiated it, as to which there is a controversy.

Mr. Greenhut's attorney advised him in the exercise of his duty as trustee in bankruptcy that it was his duty to bring a suit for the purpose of getting possession of this security or establishing the interest of the bankrupt estate therein, and in bringing that suit it was necessary to make this bank of which Mr. O'Neal was president a party thereto. That suit was brought on a Saturday by Mr. Greenhut under those circumstances under the advice of his counsel, and a little later a petition was filed in court and the bringing of the suit was ratified by the direct order of the court. On Monday Mr. O'Neal, coming down to his place of business, as he passed by Mr. Greenhut's place of business, or was about to pass by, saw Mr. Greenhut standing in the doorway. He says, then, in his affidavit that it occurred to him to go in and reproach Mr. Greenhut for bringing that suit. In the meantime it should be stated that Mr. Greenhut was indebted to the American National Bank in the sum of \$1,500 on account of a note he had indorsed, held by the bank in the sum of \$1,500, and a controversy—

Mr. McCALL. That is O'Neal's bank?

Mr. LITTLEFIELD. Yes; and a controversy had arisen between the bank and Mr. Greenhut as to whether he ought to pay on that indorsement, Mr. Greenhut claiming that the security held by the bank ought to be applied to all the indebtedness of the debtor for whom he indorsed and the bank contesting that proposition. Before the suit was brought by the trustee the bank had sued Mr. Greenhut on the \$1,500 indorsement, so at the time this affray occurred there were two suits pending, one in favor of the trustee, in which the bank was made a party, and one in favor of the bank against Mr. Greenhut. Now, what occurred? I shall not take the time to go over it in detail, but I shall simply say this: Mr. Greenhut, in substance, says Mr. O'Neal came into his room and began to discuss this litigation. Mr. Greenhut says the controversy was about litigation that he had brought as trustee and made the bank a party to—and, by the way, I may say here it does not appear that the bank was anything more than a formal party, so far as that is concerned; I do not know what the

facts may be; I have not been able to get them from the papers—but Mr. Greenhut says that the controversy was about that suit.

In the course of some discussion which took place the lie was passed and that Mr. O'Neal made an assault upon him; Mr. O'Neal, before he made the assault, had started to leave to go into the street, but he had not reached the street, and he made the assault upon Mr. Greenhut, which Mr. Greenhut repelled, and then Mr. O'Neal took out a pocketknife and cut Greenhut from his eye down to the corner of his mouth and stabbed him four or five times in the body, and then they went upon the street and were separated by a man named Mayer, who took hold of O'Neal and endeavored to take the jackknife from his hand. Those are the circumstances, as claimed by Greenhut.

The great question was, Was this attack and this assault made upon this man as trustee, and by reason of this suit brought by him, as trustee, against the bank? I do not think that the suggestion the distinguished gentleman makes in his report is entitled to very much consideration, and that suggestion is this: The complaint of O'Neal was not because he had brought the suit against the bank, but because the suit against the bank had no foundation. Now, there may be a distinction or difference between the two, but if there is I can not see it. If there were, it would be about this, that if a man brings a suit against a defendant in Florida and the defendant in Florida determines in the tribunal of his own consciousness that it is without foundation, that is has no basis, then it becomes legitimate and proper for him to settle that suit in the tribunal of personal controversy, and make a jackknife the arbiter, instead of leaving it to the courts.

And I do not think it is wise by any conclusion we may reach in this case to ratify any proposition like that, because if it had no foundation he had a perfect defense in court when it reached court, where he should have gone, and if it was baseless and malicious he had his action for malicious prosecution, and the court would have furnished him an adequate remedy. There are no circumstances so far as that suit is concerned that would justify a man in arbitrating that proposition with a jackknife upon the trustee, I submit.

The question is whether O'Neal made this assault by reason of the fact of Greenhut's being trustee. Let me read from O'Neal's affidavit:

It suddenly occurred to respondent to reproach the said Greenhut with having brought the suit mentioned in his affidavit against the said bank—

Now, mark that—

It suddenly occurred to respondent (the said O'Neal) to reproach the said Greenhut with having brought the suit mentioned in his affidavit against the said bank when he, the said Greenhut, knew, as aforesaid, that there was no foundation therefor.

Then he goes on:

When the respondent reproached the said Greenhut with his attitude toward the bank, of which he had been a stockholder and director, both in his refusal to pay the negotiable paper hereinbefore mentioned and in the bringing of an unfounded suit against it—

I beg to mark this—

the conversation, however, concerning chiefly the bringing of the said suit against the said bank, hot words passed between the said respondent and said Greenhut, concerning which the said Greenhut said he would "do respondent up."

Then comes the controversy between these two men as to whether or not Mr. Greenhut inaugurated the assault or whether Mr. O'Neal himself was the aggressor. I would like to ask a question of the distinguished gentleman from Pennsylvania [Mr. Palmer].

I find on page 252 this statement by Mr. Liddon, counsel against Swayne:

In this case I file the stenographer's report of the evidence.

That occurs under the following heading:

Oppression of W. C. O'Neal in alleged contempt case:

Now, I would like to ask the distinguished gentleman from Pennsylvania [Mr. Palmer] whether that stenographer's report of evidence was filed?

Mr. PALMER. I never saw it.

Mr. LITTLEFIELD. I would like to ask the gentleman from California [Mr. Gillett] whether that stenographer's report of evidence was ever filed?

Mr. GILLETT of California. It was there, but it became lost, and neither Mr. Palmer nor myself could find it, although we looked for it in the Sergeant at Arms' room.

Mr. LITTLEFIELD. My question is, Was it filed with the subcommittee?

Mr. GILLETT of California. It was filed with the subcommittee and left on the table.

Mr. LITTLEFIELD. I would like to know if the subcommittee has made any effort to secure a transcript of the stenographer's statement that was filed with the committee on the 18th, I think, of March last, or somewhere along there.

Mr. PALMER. I say that I never saw it. This report says it was filed, but I do not know whether it was or not. I never saw it, and do not know whether it was filed or not.

Mr. LITTLEFIELD. I will now say that I have the stenographer's report of the evidence.

Mr. PALMER. I suppose that is the reason it is not printed.

Mr. LITTLEFIELD. No; it is not why it is not printed. It was sent by the clerk. It is a very kind intimation of the gentleman in view of the statement I made in his interest this morning.

Mr. PALMER. I do not mean to insinuate that you had the report.

Mr. LITTLEFIELD. I do not ask you what you mean to insinuate. I simply say that is a very kind and courteous intimation of the gentleman after the statement I made this morning at his request.

Now, let me say, this stenographer's report of the evidence in the O'Neal case shows Judge Liddon filed the record somewhere last March. The duplicate transcript, which is the one I have, was forwarded to the gentleman from California [Mr. Gillett], reaching him the day before yesterday; and if the gentleman from Pennsylvania had had possession of that transcript he would not have made—that is, I do not think he would have made—some of the assertions that are made in his report, because the gentleman states in his report that only the testimony of Greenhut and O'Neal was taken.

Mr. COCKRAN of New York. What page?

Mr. LITTLEFIELD. Page 21:

The testimony of Greenhut and O'Neal was taken; none of the bystanders were sworn, nor was any other person sworn.

Well, that would leave the case to depend altogether on Greenhut and O'Neal, and leave an impression, I submit, from the report of the gentleman, that the court did not take the pains and nobody else had taken the pains to present all the facts. The gentleman suggests that the bystanders were not sworn. I do not see why the suggestion is made, unless it is to question the propriety of the action of the judge.

I will refer to this transcript, which is about 75 pages, and which was introduced as evidence, but which was unfortunately some way lost in the preparation of this case, and has not until now been produced.

I do not want to make any reflection on anybody, but I will say this: So far as I have been able to inquire, every document, apparently, missing or that has been lost in the shuffle happens to be a document that would make for the interest of Judge Swayne. Now, I do not say that anybody suppressed them on that account. I am simply calling attention to the fact, and it is a fact and an unpleasant fact.

This transcript shows that Mr. O'Neal was a witness and was cross-examined. Mr. O'Neal stated in his answer, filed in court, "that Mr. Greenhut in his answer to the suit on the \$1,500 note had interposed a defense which this respondent believed and believes to be untrue and known to the said Greenhut to be untrue." That is the affidavit sworn to, I think, on the 19th or 20th of November, 1902. Well, 15 or 18 days afterwards he is cross-examined in the case, and the cross-examination shows that he says he had no knowledge of the character of the plea.

I am only calling attention to this so that you can see when Judge Swayne passed upon this case he had more before him than indicated by the report of the distinguished gentleman and the record where all of this transcript happens to have been left out:

Q. Mr. O'Neal, you said in your affidavit that the plea interposed by Mr. Greenhut to the suit of the American National Bank against him was false, and you believed that he knew it to be false. What was that plea, do you know?—

A. I think we went over the plea at the time, but—

Q. I am just asking you now if you know what that plea was?—A. I could not undertake to state the plea now. I remember going over the plea, though.

Q. Do you know what the nature of the plea was?—A. I could not tell you about the plea, but I remember going over the papers at the time.

This is about 15 days after he made the affidavit that it was false, and known by the man who made it to be false. He says, "I can not tell you about the plea, but I remember going over the plea at the time." Now, that may not conclusively demonstrate that Mr. O'Neal was not a man of credibility, but it does impeach his credibility, and it was a fact before Judge Swayne.

The cross-examination further shows that Mr. O'Neal had plead guilty to shooting across the street. That is a peculiar offense belonging to Florida, I suppose. He had plead guilty twice for carrying concealed weapons, all three criminal acts; that he had been sued and judgment recovered for \$50 for an assault with a claw hammer. The statement of Mr. Greenhut was that the altercation occurred in the store; O'Neal said a large part of it was on the outside. The report says that no witnesses but Greenhut and O'Neal were called.

The fact is, that this transcript of the evidence, which was filed but lost in the shuffle, says that at least six other witnesses were called,

two of whom were directors of the bank, called by O'Neal; and it shows further that while O'Neal's statement was that Mr. Greenhut was the aggressor and struck him first after the lie had been given between them, it shows that Mr. McLellan, a reporter for a daily newspaper in Pensacola, after he learned of the occurrence of the assault, immediately called upon Mr. O'Neal for the purpose of getting his version, and Mr. O'Neal's version to him was that Greenhut gave him the lie and he struck Greenhut, and then Greenhut struck him.

In other words, if he stated the facts to Mr. McLellan, then Mr. O'Neal was the aggressor instead of Mr. Greenhut, as Mr. O'Neal has stated in his affidavit. It also shows that Mr. O'Neal presented at the hearing before the judge a small pocketknife as the weapon with which the assault was made—I do not know whether it was a penknife or what—and that they called a gentleman by the name of Mayer, who testified that he took hold of Mr. O'Neal when he had this jackknife in his hand, with which he was asserting his judicial rights as against this trustee in bankruptcy, and Mr. Mayer said that the jackknife that he presented in court was not the jackknife that he tried to get out of his hand, again impeaching Mr. O'Neal. Mr. Rattinger, another witness, is not so definite about it; but he comes in also at that hearing and says that he saw that jackknife, and he thinks that the jackknife presented in court by Mr. O'Neal is not the jackknife with which he defended himself in this lawsuit brought by this trustee in bankruptcy.

So, you see, these circumstances all tend, to fair-minded men, to impeach more or less the credibility of the witness O'Neal, who, by the way, as I shall show somewhat briefly as I go on, is the instigator and the inspirer and the carrier-on of this impeachment proceeding. Now, bear that in mind.

I will put this transcript in the record. I ought to say in all frankness right at this stage that the transcript states the reasons that Judge Swayne gave; and Judge Swayne did not give, in his reasoning, the weight to these considerations that I have now given in the argument. He discusses the probabilities of the case.

He calls attention to the fact that on Mr. O'Neal's own statement, as made by him upon the stand and disclosed in his affidavit, he had no legal excuse for using his deadly weapon, because he had not retreated to the wall. He was going outdoors when the fracas occurred, and he could have stepped out of doors in a moment and gotten entirely out of the way of Greenhut. Judge Swayne discussed the character of the two men, and I say he does not place the weight upon these considerations in his decision that I should have placed upon them if I had been giving the opinion. But the testimony had been given before him. He had these facts. He knew these men and how they were situated, and the condition of things.

That was the situation that appeared before Judge Swayne when he determined that, under those circumstances, O'Neal had been guilty of contempt, and fined him and sentenced him to imprisonment for 60 days. What happened then? Before I read that I ought to call your attention to this fact, as bearing upon the question of the innocence or the guilt of this gentleman.

The evidence discloses that on that very forenoon or afternoon—I have forgotten whether this occurred in the forenoon or the afternoon—he employed a lawyer by the name of Wentworth; so conscious



was he of his innocence, so satisfied was he that he had done nothing for which he could be held or for which he was responsible, the other man being the aggressor, that within a very few minutes after it occurred he employed Wentworth as an attorney, and Wentworth on the very same day sought to employ Tunison, whom my friend [Mr. Palmer] took great satisfaction, when he made his first report and his first speech, in denouncing before the House as a dishonest man. Well, I suppose he felt that if he was innocent it might be well enough to be prepared with the proper and necessary material to establish the fact, although on his theory he never expected his guilt to be charged.

In addition to all this, it is to be noted that W. A. Blount, O'Neal's attorney in the contempt proceedings, although originally cross-examined by the gentleman from Alabama [Mr. Clayton] for the purpose of getting something unfavorable to Swayne, has to admit that these facts were fairly susceptible of the construction that Swayne put upon them, as the following extract shows:

By Judge CLAYTON:

Q. That was never reviewed by any court?—A. No.

Q. That, in your opinion, was not as good as your opinion?—A. It was entirely erroneous.

Q. Did the evidence tend to show that the assault was against Greenhut, because he was trustee?—A. I don't think there was any testimony leading to that inference.

Q. Or had any reference to his being trustee?—A. There was evidence that related to his being trustee. In my opinion, it was demonstrated that it was a personal affray between Greenhut and O'Neal, which might have been induced by official actions of Greenhut, but not because he was trustee, or to obstruct his official duty.

Q. Is it not that the cause of the affray was another matter—concerning the American National Bank, of which O'Neal was president?—A. I think the evidence demonstrated that, *but I will say the evidence could have demonstrated that it did not.*

And I may go further and say that this case discloses that Mr. O'Neal not only was prosecuted in these contempt proceedings, but he was prosecuted before a justice of the peace in the State of Florida; and although application after application was made for a hearing in order that he might be held by the proper authorities, more than one year elapsed before a hearing could be procured in the case of Mr. O'Neal, and not then until a change had been made in the office of the justice of the peace in Pensacola, Fla. Of course, that does not necessarily determine the conditions here, but it illuminates the circumstances and conditions under which this hounded and hunted old man was holding court in Pensacola, Fla., and it indicates the attitude and the sentiment and the feeling, yes, and I may go further and say perhaps the prejudices of the people among whom he was holding court, who were there to criticize. It may illuminate the situation in which he found himself, and it may illuminate a great many of the acts of the judge, because when a man knows he is standing up to be attacked by the whole community he may do some things as matters of precaution that in an ordinary community where prejudice did not exist, where the attacks were not being made upon him, might not be done; and those acts under other circumstances might appear to be unwise acts. That may have been an element in his failure to reply to the letter asking him to recuse himself. These things should all be considered in mitigation of his acts.

I called attention to the fact that the judge had before him these facts.

Now, the gentleman says that it is an extraordinary proceeding, and I think distinguished gentlemen have suggested that there is no authority under section 725, if I have the number of the section right, of the Revised Statutes of the United States, for the punishment of O'Neal under these circumstances for contempt. Well, let me say that Judge Swayne did this, not indicating tyranny, not indicating any attempt to abuse or any desire to abuse any respondent before him. Here was O'Neal, who had assaulted his trustee with a deadly weapon. And this trustee, by the way, was confined to his house some two or three weeks by reason of the wound received at the hands of O'Neal; and it was a very close question as to whether or not, under the circumstances, he might not have been killed by O'Neal. He had no way of defending himself from the assault except with his naked hands.

Bearing upon the question of the malice of this judge and his desire to tyrannize and his purpose to oppress, what does he do when exception is taken to his rulings? When you read the ruling you will hear him say that the question was raised as to his right to entertain jurisdiction of this offense and impose a penalty, the right to hear and determine, and that it might be open to question. I never heard of a suspension of sentence of that kind. O'Neal applied for a writ of error to the Supreme Court of the United States, in which Judge Swayne certified that the question of jurisdiction was to be presented, and he granted a supersedeas of the sentence, so that O'Neal was never imprisoned a moment under this sentence. He prosecuted the writ of error in the Supreme Court of the United States (190 U. S., 36), and the court said this when it came before them:

Jurisdiction over the person and jurisdiction over the subject matter of contempts were not challenged. The charge was the commission of an assault on an officer of the court for the purpose of preventing the discharge of his duties as such officer, and the contention was that on the facts no case of contempt was made out.

In other words, the contention was addressed to the merits of the case and not to the jurisdiction of the court. An erroneous conclusion in that regard can only be reviewed on appeal or error or in such appropriate way as may be provided.

In other words, the contention was made that the merits of the case were to be reviewed, and the court assumed the jurisdiction and said that the parties conceded it.

Well, the gentleman is allowed further opportunity and time. I never heard of a litigant, I never knew of a party in any court given more consideration and more opportunity to protect his rights. Every appeal or opportunity for the correction of error which he desired was given in this case.

He prosecuted a writ of habeas corpus, and he went to Judge Pardee, Judge Shelby, and Judge McCormick, and they agreed in this opinion. This is a question of jurisdiction. Does the gentleman suggest that he hadn't jurisdiction, that he hadn't the right to hear and determine? Let us see what the three judges say:

The questions before the district court in the contempt proceeding were whether or not an assault upon an officer of the court, to wit, a trustee in bankruptcy, for and on account of, and in resistance of, the performance of the

duties of such trustee, had been committed by the relator; and if so, was it, under the facts proven, a contempt of the court whose officer the trustee was? *Unquestionably* the district court had jurisdiction summarily to try and determine these questions, and, having such jurisdiction, said court was fully authorized to hear and decide and adjudge upon the merits. (125 F. R., 967.)

Is it not idle for me to stand here and suggest that, in my judgment, Judge Swayne, in taking jurisdiction, in hearing and determining was amply justified by the law as it stands? If he is the subject of impeachment for this reason, then Judge Pardee, Judge Shelby, and Judge McCormick are even more open to the charge of impeachment, because, as I have suggested in connection with the other case, they announced this law deliberately.

These are the facts, and that is the law relating to the O'Neal case, and I submit, as far as I am concerned, that under the law they come very far from establishing a case against Judge Swayne. I see nothing that this judge did under these circumstances that he was not bound under his oath as a judge to do.

I have said nearly all I care to say about this case. I have discussed every article, I believe, in it. I want the House to know the fact, that O'Neal was the inspirer and instigator of these proceedings. The case shows that O'Neal procured the articles of impeachment that were presented to the Florida Legislature; that his counsel with him were present, lobbying them through the legislature; that they gave no hearing to Judge Swayne in the legislature, no reference to a committee; that they spent something like \$400 for champagne to induce favorable action on this matter—I am making no reflection on the gentleman; I suppose the use of champagne is not unusual in other States—and it is no reflection on Florida.

But it shows that O'Neal was the man behind the proceedings, and after the resolutions were passed through the Florida Legislature, O'Neal, with his counsel, Laney, Davis, Wentworth, and others, appeared in this case either as witnesses in the interest of the prosecution or as counsel therein, and continued to appear, and it is admitted and conceded they were then under his pay; and, I think, the record fairly justifies the conclusion that they are now carrying on the case, so far as they are concerned, with their expenses paid and their time paid by the estate of O'Neal, although more than a year since, as was stated by the gentleman from Pennsylvania [Mr. Palmer], O'Neal went into the presence of his Maker.

The great poet says:

The evil that men do lives after them;  
The good is oft interred with their bones.

Although O'Neal is before his Maker, his deliberate purpose to persecute remains.

I want to say to the House that this charge in relation to the private war, occurring in 1893, well known and well understood, with proceedings then pending to indirectly legislate this judge out of office, were not then thought sufficient to constitute ground of impeachment, because O'Neal had not at that time been held for contempt and been allowed every opportunity that a litigant could be allowed in any court to protect his interest and his rights. This question of non-residence was never suggested by anybody until O'Neal decided to erect a tribunal of his own for the determination of his own case and open upon that tribunal his own jackknife for the purpose of settling

the controversy. Belden and Davis never suggested that their cases were occasions for impeachment until when? Why, until O'Neal had made his statement before Judge Swayne and had undertaken to assault, with intent to murder, the trustee in bankruptcy—not a single charge, not a single accusation, no resolution in the Florida Legislature—although 11 years had transpired after some of these acts that are now charged had been committed by this judge.

There was no hunting of Judge Swayne, no hounding of Judge Swayne until what? Until O'Neal, who now seeks to get his revenge for the action taken by the judge in the protection of an officer of his court, an action that he was bound to take; until he undertook to settle this controversy in his own way, with his own weapons, a course which, if allowed, would paralyze the arm of every court in the land.

The solemn and unusual remedy of impeachment is not invoked until O'Neal reproaches in blood an officer of Judge Swayne's court.

O'Neal is dead, to be sure, but behind him he has left this baleful legacy. A fair construction of this record shows that his funds are now to an extent carrying it on. I do not say that Liddon is getting paid from his estate, because Liddon has not disclosed the men who pay him, except as to Hoskins. I know not what course others may take. I care not. I urge no action one way or another upon any Member of this House, but as for me, may my tongue cleave to the roof of my mouth and my right hand forget its cunning before I lend, by word or deed, my aid to anything that shall tend to consummate this infamous legacy of hatred, malice, and revenge. [Prolonged applause.]

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APPENDIX.

In the United States circuit court, northern district of Florida, at Pensacola. In re matter of contempt W. C. O'Neal.

This cause coming on for a hearing before Judge Charles Swayne on December 8, 1902, the following proceedings were had:

Counsel for prosecution offered in evidence the petition of Scarritt Moreno, heretofore filed in this court, seeking to obtain the benefit of the bankruptcy law, the document belonging to the files of this court.

Counsel for respondent makes no objection to its introduction.

Counsel for prosecution offers in evidence the order made by the clerk of the court referring the petition which has been offered in evidence to the referee.

Counsel for respondent makes no objection to its introduction.

Counsel for prosecution offers in evidence the order made by the referee adjudicating Scarritt Moreno a bankrupt.

Counsel for respondent makes no objection to its introduction.

Counsel for prosecution offers in evidence the affidavit made by A. Greenhut as trustee.

COUNSEL FOR RESPONDENT. Are you going to offer his appointment as trustee?

COUNSEL FOR PROSECUTION. That is his oath as trustee.

COUNSEL FOR RESPONDENT. Was there an appointment?

COUNSEL FOR PROSECUTION. There was an order and approval of the bond.

COUNSEL FOR RESPONDENT. Are you going to offer those?

COUNSEL FOR PROSECUTION. Yes, sir.

COUNSEL FOR RESPONDENT. We have no objection to them.

COUNSEL FOR PROSECUTION. I now offer the bond of the trustee.

COUNSEL FOR RESPONDENT. We have no objection.

COUNSEL FOR PROSECUTION. I now offer the petition of the trustee, filed on October 9, 1902.

**COUNSEL FOR RESPONDENT.** We object to this petition, may it please the court. It is a petition of A. Greenhut, trustee, in which he asks that he be allowed to compensate Tunison & Loftin, as attorneys, for certain services rendered or to be rendered by them in the conduct of the business of this bankruptcy estate and representation of the trustee. I assume that the purpose of this offer is to get in evidence before the court the fact that Tunison & Loftin were engaged in the preparation of the bill of complaint whereby it is sought to subject the property purchased by the said Scarritt Moreno, the said bankrupt, in the name of his wife, to the payment of debts provable in this bankruptcy proceeding, and for the intention of following this by a granting of the prayer of this petition so as to show that Mr. Greenhut at that time was acting under the order of the court, or if there was no direct order upon the ratification of the court of the action which he was doing. We object to that on the ground that there is no allegation in the petition which covers any such evidence. The allegation is that he was an officer of the court and that he was proceeding under the advice of his attorney to do this, and there is absolutely no intimation by the court that he was then acting under or by virtue of any order of the court. If this evidence be not for that purpose, then it is entirely irrelevant and immaterial. If it be for that purpose it is bolstering up a petition which does not contain an allegation of that kind.

**COUNSEL FOR PROSECUTION.** If your honor please, Mr. Blount has properly supposed that the offer of that paper in evidence is for the purpose of showing a ratification by the court of the trustee's action in bringing this bill. It was not necessary under the law for the trustee to secure such ratification or such direction.

**THE COURT.** This matter of evidence having been argued on demurrer, the court having seen and passed upon all this matter on this ground, it is hardly worth while to take up the time of the court to argue it. I will give you an exception. The court is entirely familiar with the purpose for which they are offered.

**COUNSEL FOR RESPONDENT.** We note an exception.

**COUNSEL FOR PROSECUTION.** I now, if your honor please, offer in evidence the order made by the referee in the absence of your honor upon the petition that has just been offered.

**COUNSEL FOR RESPONDENT.** We object to the introduction of this paper in evidence upon the ground that if it be offered for the purpose of showing an order of the court under which the trustee was acting, or a ratification of the action of the trustee in bringing this bill, it is founded upon no allegation in the petition and that if it be not for that purpose, it is immaterial and irrelevant to any issue made in this cause.

**THE COURT.** The court admits the last two papers, because, in the opinion of the court, they show that the trustee in this cause was acting at the time not only as an officer of the court, but that they also show that his action in regard to the bringing of the suit in question, of which the affidavit and the answer both speak, was ratified by those papers.

**COUNSEL FOR RESPONDENT.** We note an exception to the ruling of the court.

Thereupon the prosecutor called Adolph Greenhut, who, being duly sworn, testified as follows. to wit:

Direct examination by B. C. TUNISON, Esq.:

Q. What is your name?—A. Adolph Greenhut.

Q. Where do you reside, Mr. Greenhut?—A. Pensacola, Fla.

Q. What is your age?—A. I was 51 last August.

Q. How long, Mr. Greenhut, have you resided in Pensacola?—A. I came here in July, 1886.

Q. Before that time, Mr. Greenhut, where did you reside?—A. Greenville, Ala., from 1873 to 1886.

Q. What is your business?—A. I am a wholesale grocery merchant.

Q. Where?—A. On Government Street, in this city.

Q. Doing business in what name?—A. Greenhut & Co.

Q. Mr. Greenhut, were you or are you the trustee of the estate of Scarritt Moreno, bankrupt?—A. I am, sir.

Q. Do you know when you were appointed as such trustee—about when?—A. I think, as near as I can recollect, in September. I have forgotten the date.

Q. Mr. Greenhut, look at that paper and state if you know what it is?—A. I think it is a bill filed in the chancery court of this county.

Q. A bill filed by you as trustee?—A. Yes, sir.



**COUNSEL FOR PROSECUTION.** I offer in evidence, if your honor please, the bill of complaint in the cause pending in the circuit court of Escambia County, Fla., between Adolph Greenhut, trustee of the estate of Scarritt Moreno, bankrupt, complainant, v. Scarritt Moreno, Susie R. Moreno, his wife, Mansfield Moreno, the American National Bank of Pensacola, S. J. Foshee; Alex. McGowin, jr., C. M. Covington, and the Citizens' National Bank of Pensacola, filed in the office of the clerk of the Escambia County Circuit Court on October 18, 1902, and I ask leave to withdraw the original bill and place in lieu thereof an exemplified copy thereof.

**COUNSEL FOR RESPONDENT.** We have no objection, may it please the court, to the filing of a certified copy in the place of this, and really have no objection to the bill, except that there is no issue made upon those facts, and that the purpose of the bill is set forth very distinctly in the affidavit, and it would expedite the cause not to encumber the record with long papers of this kind. We state that we admit in part and presume in part that it was true, so that it made no issue whatever upon it.

**The Court.** It will be admitted.

**Q.** Mr. Greenhut, do you know on what day of the week the bill that has just been offered in evidence was filed and the suit commenced?—**A.** I think it was on the 18th day of October, 1902.

**Q.** Do you know what day of the week that was?—**A.** On Saturday.

**Q.** Do you know what time of day on Saturday that bill was filed?—**A.** I do not know the exact hour; no, sir; I could not tell that.

**Q.** Mr. Greenhut, by whose advice was that bill which has been offered in evidence filed?—**A.** My attorney, sir.

**Q.** Who was your attorney?—**A.** B. C. Tunison.

**Q.** Mr. Tunison, did you say? Do you know W. C. O'Neal?—**A.** I do, sir.

**Q.** How long have you known him?—**A.** Possibly a month or two before October two years.

**Q.** Before the past October two years?—**A.** Yes, sir.

**Q.** Do you know whether or not he occupies, or at the time of the filing of this bill whether he did occupy, any position with the American National Bank?—**A.** He was president of the American National Bank.

**Q.** Was he president at that time?—**A.** I think so.

**Q.** Did you see Mr. O'Neal on the Monday following the commencement of this suit?—**A.** Yes, sir.

**Q.** At what time of day, Mr. Greenhut, did you see him?—**A.** A little after 9 o'clock in the morning.

**Q.** Where did you see him?—**A.** I think I seen him coming out of what we call the bucket shop and coming down the street.

**Q.** Coming out of—— **A.** I think he was coming out of there, and I seen him coming down the street from that direction.

**Q.** The bucket shop, you say?—**A.** The stock exchange.

**Q.** That is on what street?—**A.** Government Street.

**Q.** West of your store, is it not?—**A.** Yes, sir.

**Q.** Where were you at the time?—**A.** At my store, standing in front of the store.

**Q.** With whom?—**A.** A. Lischkoff.

**Q.** Did you only see Mr. O'Neal there at the bucket shop or the exchange?—**A.** There may have been some other people on the street, but I do not recollect them.

**Q.** Did you see him after seeing him at the bucket shop?—**A.** He came down the street. I first saw him coming out of there, and he came down the street toward my office.

**Q.** Mr. Greenhut, at that time did you have a coat and vest on?—**A.** I had no coat on.

**Q.** You had on a vest?—**A.** Yes, sir.

**Q.** You were in your shirt sleeves, were you?—**A.** Yes, sir.

**Q.** Did Mr. O'Neal come down the street toward your store?—**A.** He came toward me.

**Q.** And where were you at that time?—**A.** I was standing right in front of my store next to A. Lischkoff. For instance, this is the post; he was standing outside and I was standing right next to him.

**Q.** Right in your doorway?—**A.** Not in the doorway. We were just sideways.

**Q.** Did Mr. O'Neal speak to you at that time?—**A.** He addressed me.

**Q.** What did he do?—**A.** Said he would like to speak to me when I am through.

**Q.** What reply did you make to him?—**A.** I told him I was through.

Q. What was then done?—A. Mr. Lischkoff passed off and I went in the office facing the desk with my back toward the west and he standing right in front of me.

Q. Now, how far from the office door did you go?—A. I do not know; I expect it was 4 or 5 feet, possibly 6—not exceeding 6 feet.

Q. You were standing there next to the desk, you say?—A. Near the desk. There was a desk, then a safe, and I was standing right along there—right in front of the desk.

Q. With your back toward that desk and the safe; that was, on the westerly side of your office?—A. Yes, sir.

Q. What did Mr. O'Neal do?—A. Standing right in front of me, and he says, "I see you brought the American National Bank into that suit"—

Q. What suit?—A. The Morenos. That is the only suit that was mentioned. I says, "Yes; the Citizens' National Bank is in there, too." He says, "Well, I do not care anything about that." He says, "Why did you do that?" I says, "My counsel says it was necessary." He says, "Well, don't you know I offered you that property?" I says, "Yes." He says, "Don't you know these parties paid for it?" and I says, "I do not know."

Q. What then, Mr. Greenhut?—A. He says, "You are no gentleman." I says, "Mr. O'Neal, I am as much of a gentleman as you are."

Q. Just state after that what took place.—A. He hesitated there a little, and I thought he had started, and he says, "Well, we will settle that," and he was then passing out, starting out of the west side. I was on the other side, and just as he got about to the door he wheeled with a knife—he had a knife in his hands or his pocket—and just wheeled around and lunged at me. I was perfectly horror struck and tried to grab it and he grabbed around me and stabbed me twice, in here and in there and in there, and he dragged me out toward the street. He had perfect control over me. I was horror struck from loss of blood and from the idea of being cut up.

Q. Will you just show the court that first cut?

(Witness thereupon exhibited to the court the first cut.)

Q. Where was the next cut, Mr. Greenhut?—A. I could not possibly say, because I was at such a loss—

Q. What other cut did he inflict on you?—A. A cut right in my arm, two in my body, and in my right hand.

Q. What part of the body was the two cuts?—A. Right here.

Q. Mr. Greenhut, what is that [exhibiting bundle to the witness]?—A. That is the vest I had on.

Q. What is that, Mr. Greenhut [exhibiting to the witness another bundle]?—A. That is a cut.

Q. And what is that color?—A. That is blood.

Q. This is what [exhibiting to witness another bundle]?—A. That is the shirt I had on.

Q. And what is this?—A. That is a cut.

Q. Mr. Greenhut, where did you keep the books, papers, etc., relative to your trusteeship?—A. They were in a separate safe in my office.

Q. At the same office where Mr. O'Neal visited?—A. Yes, sir.

Q. Mr. Greenhut, did the conduct of Mr. O'Neal in any way interfere with your management of the Moreno estate?—A. I certainly think it did, because I have not been able to do anything for several weeks afterwards, for I was in bed.

Q. Was there any work that you were—anything to be done by you as trustee that you were advised shortly before the cutting it was necessary for you to do pretty soon?—A. Settle matters up; wanted to make a report to the referee what we had done. We learned that there was some thousands of feet of lumber at Bagdad, at Simpson & Co., which we thought as trustee I was entitled to, and contemplated taking, and wanted to proceed to seeing about the household fixtures and furniture of Scarritt Moreno; we discovered some land that Scarritt Moreno had bought that was under mortgage and wanted to sell some rights and interest that he might have in the Moreno mill down here.

Q. Have you been able since the attack on you made by Mr. O'Neal to attend to any of this business?—A. I have not attended to business at all for two or three weeks, and since that time I am so unnerved I do not do anything except a little clerical work.

Q. Did you have any medical attendance?—A. Yes, sir.

Q. Or attention?—A. Yes, sir.

Q. From whom?—A. Dr. F. G. Renshaw.

Cross-examination by W. A. BLOUNT, Esq.:

Q. We move to strike out from this testimony that portion which relates to the business of the trust that Mr. Greenhut was then carrying on and as to any prevention of him from carrying on that business, except so far as the particular bill filed against Scarritt Moreno and the American National Bank is concerned, upon the ground that there is no showing in the evidence that any act or obstruction of the administration of justice done by Mr. O'Neal was done in the presence of the court or so near thereto as to obstruct the administration of justice, and upon the further ground that the work which Mr. Greenhut testifies to is not testified to have been done under any mandate, order, rule, process, or command of this court, and therefore that Mr. O'Neal was not in disobedience of or obstructing any such order, rule, command, mandate, or process of the court.

COUNSEL FOR PROSECUTION. This is the same question that you have passed upon in the demurrer and was overruled.

The COURT. It is a broader question, but the court thinks that it is all admissible under the allegations of the affidavit and under the several features which is in the answer. I will give you an exception.

Counsel for respondent noted exception to the ruling of the court.

Q. You say that this matter occurred about 9 o'clock on the morning of October 20?—A. After 9 o'clock.

Q. Your office, your store door, is on East Government Street, is it not?—A. Yes, sir.

Q. On the north side?—A. Yes, sir.

Q. Is that or not in the line of the path that would be pursued by Mr. O'Neal in coming from the stock exchange to his office?—A. Very often he comes that way.

Q. So that that morning he was pursuing a frequent route used by him?—A. I suppose so. Sometimes I have seen him come that way and seen him go another.

Q. Now, your bill had been filed, I believe, as you stated, on October 18?—A. Yes, sir; I think so.

Q. And this was on October 20?—A. Yes, sir.

Q. When Mr. O'Neal spoke to you at the door of your store did he say anything further than that he wanted to see you when you were at leisure?—A. That is what he said.

Q. And you told him in effect that you were at leisure at that time?—A. Yes, sir.

Q. And you went into your office?—A. Yes, sir.

Q. During the conversation in your office was there any other subject of conversation except the fact that you had brought this bill against Scarritt Moreno and others involving the American National Bank?—A. Nothing except what I stated.

Q. Was there anything said to you about an indebtedness which the American National Bank claimed against you because of your indorsement of a note of Scarritt Moreno—an acceptance of Moreno's?—A. Not a single word.

Q. Now, then, as I recollect, according to your testimony the last words that passed between you and Mr. O'Neal were that you said that Mr. O'Neal said you were no gentleman, and you said, "I am as much of a gentleman as you?"—A. Yes, sir.

Q. And then he said, "We will settle that," and that followed immediately after the words that I have mentioned?—A. He hesitated possibly a second or two.

Q. So that there were no words or other conversation intervening between what you and he said?—A. None that I recollect.

Q. And after that he started to go out of the door?—A. He did not go out.

Q. He started to go out, I said.—A. Yes, sir.

Q. And you followed on behind him?—A. No, sir; I didn't.

Q. What did you do?—A. I crossed over to the other side.

Q. What is it you did, Mr. Greenhut?—A. He started toward the right-hand side of the door and I started out slowly on the other side. I didn't even go out at all.

Q. The right-hand side of the door. In which direction were you going when you started to go out?—A. Toward the south.

Q. In which direction was he going?—A. He was going toward the south also, and I crossed over slowly, going to the left of the door facing the street.

Q. You and he were both going toward the same door? Do I understand that he was going to the right side of the door and you to the left side of the door?—A. Yes, sir.

Q. Both going south?—A. Yes, sir.

Q. Well, now, how far had you proceeded when he turned upon you, as you said?—A. Only a few feet.

Q. You had been back into the office, as I understand you to say, some 6 or 7 feet?—A. Yes, sir; about that. That is, from the door; not back in the office.

Q. Did you or not strike Mr. O'Neal?—A. No, sir.

Q. At no time?—A. No, sir.

Q. Did you or not offer to strike him?—A. No, sir.

Q. You say, Mr. Greenhut, that at that time you had in view the doing of certain things for the trust?—A. Yes, sir.

Q. Involving, among other things, the sale of an interest in the Jordan & Brosnahan mill?—A. Yes, sir.

Q. Was that completed before you were hurt?—A. I do not think it was.

Q. It was completed afterwards, was it not?—A. I think I done some work——

Q. Was it completed by you or by your counsel?—A. By my counsel.

Q. So that you were not obstructed in that particular?—A. Had partly agreed on the prices that he could get for it, and I think it was afterwards consummated.

Q. Was there anything that was obstructed, to your knowledge, by the fact that you were injured by this affray?—A. I was not able to do anything until I got up, and in the meantime there had been a sale of an interest in the Jordan & Brosnahan mill property that I could not attend to, and a sale of some lumber had to be arranged for, and I could not consult with my attorneys about the suit.

[Part of answer lost by inability of reporter to hear witness.]

Q. Has not, as a matter of fact, during the time that you say you have been unable to do anything, all of the steps that you speak of been done with reference to endeavoring to get at the furniture and fixtures of Mr. Moreno?—A. Not during my sickness that I know of, but possibly since. I do not think it was done during the time I was laid up.

Q. Have you done anything yourself about it? Has it not all been done by your counsel?—A. That was done by my counsel, but with my consent; we have consulted together.

Q. It was simply a question of consultation?—A. I do not think it was necessary for me to do it; I trust him in all things.

Q. Mr. Greenhut, do you know whether Mr. O'Neal knew at the time that this occurrence took place that you had in your safe in your store any of the books and papers appertaining to your office as trustee?—A. I could not tell what he knew.

Q. You do not know?—A. No.

Q. Do you know whether Mr. O'Neal knew at that time that you had any authority or ratification from this court or its referee of his filing this bill against Scarritt Moreno?—A. That he knew of that?

Q. Yes, sir.—A. I could not swear that he knew it.

Q. Did you or not tell him at that time that you were acting under any order of the court or any authority of the court?—A. I told him that morning.

Q. Yes, sir.—A. I told him that I was acting under the advice of my counsel.

Q. So you did not tell him that you had any authority from the court to do it?—A. I did not think it was necessary to do that.

Redirect examination by B. C. TUNISON, Esq.:

Q. Mr. Greenhut, did you see Mr. O'Neal at any time between the time that the suit was commenced in the circuit court and the time when the assault was made?—A. What suit do you refer to?

Q. The suit that was commenced in the circuit court against Scarritt Moreno and others?—A. No, sir; not until that morning.

Q. That was the first time you saw him between the time of the filing of that suit?—A. Yes, sir.

Q. Or after the filing of the suit?—A. Yes, sir.

Q. That is all.

Thereupon F. G. Renshaw was called upon behalf of the prosecution, and, being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. Your name is Dr. Frank G. Renshaw?—A. Yes, sir.

Q. You are a practicing physician in Pensacola?—A. Yes, sir.

Q. Doctor, were you called in professionally to attend to Mr. Greenhut on or about the 20th day of October last?—A. I was.

Q. Where was Mr. Greenhut at that time?—A. I first saw him at Cushman's drug store.

Q. In Cushman's drug store?—A. Yes, sir.

Q. Cushman's drug store adjoins Mr. Greenhut's store immediately on the west, does it not?—A. It does.

Q. For what were you called upon to attend him?—A. For cuts, injuries.

Q. State, Doctor, the character of those cuts and injuries.—A. They were incised wounds; wounds made with a sharp instrument—a knife.

Q. Where were they located?—A. One was over the left cheek.

Q. Extending from what point to what point?—A. From behind the ear to the inner corner of the mouth.

Q. Did that cut his ear also?—A. Yes, sir.

Q. Did it cut the lower lobe of his ear off?—A. Partially.

Q. You sewed up that ear?—A. I did.

Q. And sewed up the wound on the left cheek?—A. I did.

Q. What other wounds or cuts, Doctor, did you see?—A. He had a triangular-shaped cut or stab, combination stab and incised wound above the left elbow joint, then the lower margin ribs on the left side a very superficial wound incised about 2 inches, possibly, in length.

Q. What else?—A. There was another injury between the thumb and index finger—the web of the hand.

Q. Which hand?—A. The right hand, I think.

Q. Was there any other?—A. I do not remember of any other.

Q. Was there not one on the left side of the back that you have not described?—A. I mentioned the one under the lower ribs.

Q. Well, what portion of the body?—A. I think it was on the left side.

By Mr. BLOUNT:

Q. That was the superficial one you spoke of?—A. Yes, sir.

By Mr. TUNISON:

Q. Not on the back?—A. I can not say positively. I have mentioned four.

Q. What portion of the left side was the wound?—A. Well, on the left.

Q. Well, on what portion of the side?—A. About the lower ribs.

Q. Right directly on the side, or was it or not towards the back?—A. It was on the side, posteriorly slightly, I believe.

No questions by respondent.

Thereupon the prosecution called F. C. Brent, who, being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.

Q. Mr. Brent, where do you reside?—A. Pensacola.

Q. Are you acquainted with Mr. A. Greenhut?—A. I am.

Q. Are you acquainted with his reputation for peace and quiet?

Counsel for respondent objects to question upon the ground that his character for peace and quiet can not be put in evidence until it is attacked.

COUNSEL FOR PROSECUTION. If your honor please, as we understand it, the answer in this case charges acts on the part of the prosecutor that in our judgment do attack his character for peace and quiet.

The COURT. I understand that to be the character of the defendant's defense, is that he was attacked by a stronger and more powerful man and one of his excuses set up in his defense. The question is whether it will be offered at this time or later.

COUNSEL FOR RESPONDENT. It does not make any difference now whether it is to be offered now or later. I had just as leave take my exception now.

We make another objection to this testimony, may it please the court, upon the ground that there is no issue made of the general character of Mr. Greenhut for peace and quiet, and that character of any kind can not be offered in evidence unless it has been attacked or impeached by the opposing side. We understand that your honor overrules it, and we save the exception.

COUNSEL FOR PROSECUTION. For the purpose of saving time, Mr. Blount consents, subject, of course, to his exception to your honor's ruling as in this wit-



ness, that the other character witnesses who have been summoned here will testify that they each know the reputation of Mr. Greenhut for peace and quietude, and that they would testify to the same and will testify that his reputation is that of a peaceable and quiet citizen.

Those witnesses are: F. C. Brent, W. J. Forbes, Rev. P. H. Whaley, William E. Anderson, L. H. Green, John W. Frater, Jacob Kryger, Boykin Jones, and William Fisher.

Prosecution rests.

Thereupon the respondent, W. C. O'Neal, was duly sworn, and testified as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. You are the W. C. O'Neal against whom this proceeding has been taken?—

A. Yes, sir.

Q. Mr. O'Neal, will you please state to the court the circumstances attending, not leading up to that time, but the circumstances attending the affray between you and Mr. A. Greenhut? Where had you been; where were you coming from that morning?—A. I was coming from home.

Q. Where did you stop on East Government Street?—A. I stopped there in front of Mr. Greenhut's place of business.

Q. He spoke of your stopping in front of the bucket shop; what place was that?—A. I do not remember whether I stopped there or not. I might have done it—at the Pensacola Stock Exchange.

Q. For what purpose did you stop?—A. I stopped there to see the quotations on cotton.

Q. Now, then, you proceeded until you came to Mr. Greenhut's, did you.—

A. Yes, sir.

Q. Then state what occurred, exactly what occurred thereafter, anything and everything from the moment that you addressed him until the time that you were finally taken apart.—A. I passed down the street, and I saw Mr. Greenhut and Mr. Lischkoff talking. I spoke to both. I says, "Good morning," and I says, "Mr. Greenhut, I would like to see you when you are at leisure," and Mr. Greenhut said, "I am at leisure now"; and I says to Mr. Greenhut, "Don't let me interrupt you, any time during the day will do," and Mr. Lischkoff says, "I am through," and he left or started to turn to go back up the street toward his place of business, and Mr. Greenhut says, "Come in." He stepped back into the back part of his office there, and I went on in and asked him why he had sued us. He says, "Well, I do not know anything about it; you will have to see my lawyer about it." I says, "Mr. Greenhut, I think you do know something about it. I think you were a director of the American National Bank when this paper that I am sued on was sold and transferred," and I says, "We did not sue you when we had to sue you without seeing you about it or without talking to you about it. We did everything we could to avoid the suit; we did everything we could to get a settlement of that before we sued you." And I talked on with him regarding this matter in that way and I reminded him of the fact that Mr. Egan had tried to get a settlement with him before we sued him on the \$1,500 debt, and I found out after talking with him it seemed it was impossible to get a settlement with him that way, and I says to him—I finally told him that I thought if he had been a gentleman he would not have done it, and he said, "I am as much of a gentleman as you are," being a director in the bank and refusing to pay a paper and letting us sue him on it, and he says he was as much of a gentleman as I am. I says, "Mr. Greenhut, I won't dispute that with you on that point; I do not want any trouble with you," and when I said that to him why he made a motion that way like he would strike me with his fist, and says, "If you fool with me I will do you up here," and I says, "No, I reckon not," and I stood there for a moment hesitating, and I turned to go out. He come on following me and he said something to me, I do not know what he said, and when he said that I told him that he lied to me about the Moreno paper, and as I told him that I turned around and Mr. Greenhut he struck me here, and I struck him with my left fist, and then I shoved him off, and when I shoved him back he kind of stumbled back like—he looked to me like he almost fell down—and then he come forward at me and I pulled out my knife and cut him and we fought on out on the street there, and I made several lunges for him and he hit me several licks with his fist, and finally he caught hold of my arm here with his right hand, and after he caught my arms I reached around and caught hold of his other arm, out in the streets, and then I hallowed to old man Hyer to come there and get him—

Q. Which old man Hyer was that?—A. Mr. Hyer of the firm of J. E. Stillman & Co.

Q. Copartner with J. E. Stillman & Co.?—A. Yes, sir.

Q. Now, Mr. O'Neal, during this conversation in the back of the office, you say that you talked to him about having brought this suit and about his conduct in not paying the Moreno acceptance?—A. Yes, sir.

Q. State to the court what you mean by the Moreno acceptance.—A. The Moreno acceptance is a \$1,500 acceptance which was accepted by Baars, Dumwody & Co. and indorsed by Scarritt Moreno and A. Greenhut.

Q. Had that been due for any length of time?—A. Yes, sir; it had been past due several months.

Q. Had you requested Mr. Greenhut to pay it?—A. Yes, sir.

Q. Did he pay it?—A. No, sir.

Q. What course had you taken with reference to procuring payment from him?—A. We brought suit against him.

Q. Was that suit then pending?—A. Yes, sir.

Q. Is it still pending?—A. Yes, sir.

Q. And, as I understand, the subject-matter of your conversation in the back part of the office was relating to both these suits—this suit which he had brought against the bank in connection with the subjection of Scarritt Moreno's property and also the suit the bank had brought against him to recover on this \$1,500 acceptance?—A. Yes, sir; we talked about both suits.

The COURT. When was the suit against Mr. Greenhut commenced?

COUNSEL FOR RESPONDENT. A month or two before

COUNSEL FOR PROSECUTION. A plea was filed on the rule day in October—the 6th day of October.

Q. Then, as I understand after discussing these matters you told him that he would not have done as he had done with reference to them if he had been a gentleman?—A. Yes, sir; I told him that.

Q. And he answered that he was as much of a gentleman as you are?—A. Yes, sir.

Q. And then you hesitated a moment and turned off?—A. Yes, sir.

Q. Did anything occur after that before you saw him in the attitude that you say of striking at you—I mean before you said to him that he had lied to you about the Moreno acceptance?—A. He said something to me just as I turned; I do not remember what he said; he spoke to me just as I turned: when he spoke he was right near to me and I turned then——

Q. He spoke to you and you turned?—A. Yes, sir.

Q. And said to him as you turned that he had lied about the Moreno acceptance?—A. Yes, sir.

Q. And then he struck you and you struck him back?—A. Yes, sir.

Q. And he advanced to strike you again?—A. Yes, sir.

Q. And you drew your knife and used it; is that what I understand?—A. Yes, sir.

Q. Where did he strike you; what part of the person?—A. He struck me on the left side.

Q. Was there any indication of that stroke after this occurrence?—A. Yes, sir.

Q. Did you subject it to any treatment by any physician, or ask any physician about it?—A. Yes, sir.

Q. Who?—A. Dr. Hannah.

Q. Have you the knife, Mr. O'Neal, that you used?—A. Yes, sir.

Q. Show it to the court, please.

[Knife here exhibited to the court.]

Q. How long had you had that knife at that time?—A. Something like a year, I think.

Q. You had it in your pocket?—A. Yes, sir.

Q. Do you carry it in your pocket?—A. Yes, sir.

Q. At what time did you open that knife?—A. I opened the knife when I shoved him back.

Q. You shoved him back, and then opened the knife?—A. Yes, sir.

Q. At the time that this occurred did you have any knowledge as to where Mr. Greenhut kept the books and papers relating to his trust matter?—A. I did not.

Q. Did you have any knowledge of any order of the court, or any order of the court or its referee, either authorizing or ratifying the bringing of this suit by Mr. Greenhut?—A. I did not.

Q. Did you or not have in contemplation any effect that your action at that time would have upon Mr. Greenhut's execution of the trust which he had in hand?—A. I did not.

Q. It is alleged here that your intention was to impede and obstruct the execution of his trust. Did you or not have any such intention?—A. I did not.

Q. Had you considered in anywise the effect of your action upon his trust?—A. No; I had not thought of it.

Q. Did you consider it during this affray that you had?—A. No, sir.

Q. Do you know whether Mr. Greenhut had known, prior to the bringing of his suit to subject this mortgaged property and attacking the mortgage of the American National Bank, as to whether that transaction was or was not a bona fide transaction?—A. He knew that it was.

Q. He knew that it was?—A. Yes, sir.

Q. What position was he in in connection with the bank at the time of that transaction?—A. He was one of the directors.

Q. Do you know whether he knew that that mortgage had been transferred to Foshee and McGowan and Covington, and that the bank had no longer any interest in it?—A. I offered him the mortgage for \$10,000 before I sold it to the other people.

Q. That is, you offered to sell him the same mortgage?—A. Yes, sir.

Q. And that you afterwards sold it to Foshee, McGowan, and Covington?—A. Yes, sir.

Q. Now, then, do you know of your own knowledge whether he knew of the sale to these three gentlemen and the payment of the consideration by them?—A. I told him that I had traded with them.

Q. You do not know except in that way?—A. No, sir; I do not know whether he saw the papers or not after they were transferred.

**Cross-examination by B. C. TUNISON, Esq.:**

Q. You say, Mr. O'Neal, that Mr. Greenhut knew that all your transactions in relation to that mortgage were bona fide?—A. Yes, sir.

Q. How did he know it?—A. He passed on it; was in the bank and discussed it.

Q. Passed upon what?—A. The paper that was secured by that mortgage.

Q. Did he pass upon the mortgage?—A. Yes, sir.

Q. When?—A. About the time we took it—about a year before that.

Q. You say that he passed upon it. What do you mean when you say he passed upon it?—A. I mean that he was one of the finance committee, and the finance committee examined all of the bank loans and discounts.

Q. Do you know that as a member of that finance committee he examined that identical loan?—A. I know that he handled the Baars Dunwody & Co. paper, and the mortgage was there in the bank.

Q. But you do not know whether or not he ever examined that mortgage, do you?—A. The mortgage—examined the mortgage?

Q. Yes, sir.—A. I do not know that he ever read the mortgage.

Q. Then you do not know whether he knew that the mortgage was bona fide or not, do you?—A. It was there, and we discussed the mortgage and had Mr. Eagan's opinion as to whether or not it was bona fide.

Q. What did you discuss about that mortgage with Mr. Greenhut?—A. We discussed as to whether the property as mortgaged covered—was worth the money or not.

Q. Worth what money?—A. The \$13,000; and we discussed as to whether or not Mrs. Moreno could make the American National Bank—whether the mortgage for \$13,000 transferred to us—as to whether or no she could make the mortgage under the laws of the State of Florida.

Q. You say that you discussed all of those matters with Mr. Greenhut?—A. I informed the finance committee that Mr. Eagan said that that could be done.

Q. Was Mr. Greenhut present at the time that you so informed the finance committee?—A. Yes, sir.

Q. You are sure of that?—A. Yes, sir.

Q. When was that?—A. About the time we took the mortgage; it has been something like a year and a half ago.

Q. That is all the knowledge that Mr. Greenhut had in relation to that mortgage, was it?—A. All the knowledge that he had of the mortgage?

Q. Yes, sir.—A. I do not know. I think he understood something about what property it covered, but I do not know if he ever examined the property itself.

Q. You say that you consulted with him about the value of the property covered by the mortgage?—A. I know that Mr. McDavid was the man who examined the property. We discussed it—that is, the finance committee.

Q. At a finance-committee meeting at which Mr. Greenhut was present?—A. Yes, sir.

Q. And you found the property to be worth how much?—A. We sold the mortgage for \$10,000.

Q. What value did the finance committee put upon that property?—A. Mr. McDavid said when he took the mortgage that it might be worth \$13,000.

Q. Was that the verdict of the finance committee—that it was worth \$13,000?—A. The finance committee passed the loan on that statement.

Q. Of how much money?—A. The loan was to secure an acceptance of Baars, Dunwody & Co., indorsed by Moreno, and the mortgage was given to better secure that paper.

Q. You say that you disposed of that \$13,000 mortgage?—A. Yes, sir.

Q. For how much money?—A. \$10,000.

Q. To whom?—A. To Foshee, McGowan & Covington.

Q. The mortgage was for \$13,000, was it?—A. Yes, sir.

Q. And you disposed of it to Foshee, McGowan & Covington?—A. Yes, sir.

Q. Do they occupy any position with your bank?—A. Yes, sir.

Q. What position?—A. Directors.

Q. One of them is vice president of the bank, is he not?—A. Yes, sir.

Q. Mr. O'Neal, you stated that Mr. Greenhut was an indorser upon a \$1,500 piece of paper held by you which he refused to pay, did you not?—A. Yes, sir.

Q. And the maker of that paper and the other indorser had gone into bankruptcy?—A. Yes, sir.

Q. How much other paper did your bank hold at the time of the failure of Messrs. Baars, Dunwody & Co. upon which Mr. Greenhut was an indorser?—A. On account of the failure of Baars, Dunwody & Co.?

Q. Yes, sir.—A. I think about \$15,000. I am not sure as to the amount, but think it was about that.

Q. Mr. Greenhut was only liable on that paper as indorser, was he not?—A. Yes, sir; I think so.

Q. He paid all the paper upon which he was indorser except the \$1,500, did he not?—A. I think we have some with his indorsement now.

Q. He protected his indorsement in every instance, did he not?—A. Yes, sir.

Q. You say you have some with his indorsement now?—A. I think so.

Q. Made by whom?—A. By the Stanton Mercantile Co.

Q. That is due?—A. No; it is not due.

Q. What is the amount of it?—A. I do not remember; it is a small bill.

Q. About how much?—A. I think it is—I guess Mr. Greenhut could inform you of the amount. I suppose \$100.

Q. But all the other paper, the other \$15,000 that Mr. Greenhut was liable on as indorser, has been paid by him, has it not, except \$1,500?—A. Yes, sir.

Q. Mr. Greenhut has been claiming to you right along that you were to protect him in that?—A. No, sir; never made any such claim.

Q. Didn't he ever say that you had agreed to protect him in the matter?—A. No, sir.

Q. What reason did he give you for not paying that indorsement?—A. He said that he thought we could make the money out of Baars, Dunwody & Co.'s assets.

Q. Why did he think the bank could; did he give you any reason?—A. He said he thought the property would bring enough to pay it all.

Q. How and for what reason does he look to that property?—A. For what reason? The mortgage recited that it was to secure any paper executed by or indorsed by Scarritt Moreno, and this paper was indorsed by Scarritt Moreno.

Q. The other paper, the balance of the \$15,000, was indorsed by Scarritt Moreno too, was it not, that you held?—A. No, sir.

Q. Most of it was, was it not?—A. There was some of it accepted by Scarritt Moreno. I do not remember any part of it that was indorsed by him.

Q. All of that paper, that \$15,000, Scarritt Moreno was primarily liable for, was he not?—A. On practically all of the \$15,000? I do not think he was; he was liable on something like half of it.

Q. And then on that half of it—

Counsel for respondent object to line of testimony, as it appears that it is the purpose of the prosecution to get the information for other matters and not with reference to this suit and there is no bearing as to how much Scarritt Moreno

owed or anything else; the only important feature is, which Greenhut denied, that there was any controversy between them relating to the transaction.

COUNSEL FOR PROSECUTION. The respondent in his answer here has set up that the prosecutor here refused to honor a certain indorsement made by him on a certain negotiable instrument; that it was held by the American National Bank. The respondent here in his answer sworn to says that Mr. Greenhut, the prosecutor in this case, interposed a plea in the suit at law brought by the bank that it was false and untrue, and I want to show by this witness that that allegation of his answer is false.

COUNSEL FOR RESPONDENT. The allegation was that he believed it to be false and still believes it, as I recollect it.

The COURT. I realized when the answer was read that several things in that answer were going to broaden the investigation considerably. I do not see how to avoid it. You may go on with it. It may or may not cut very much figure in this investigation, but like many other things that might be brought under that and some of the other allegations of the answer the main bearing may be to enable the court to judge of the veracity of the one party or the other, or they may not be worth much for anything else. In that view they may be admissible. I can not say that the main issue here is as contended by the respondent's counsel, but inasmuch as the respondent has set these matters up as a matter of defense in his answer I do not see how we can avoid going into a reply to them.

Q. Mr. O'Neal, with the other notes and negotiable papers held by your bank upon which Scarritt Moreno was primarily liable and upon which Mr. Greenhut was the indorser, did Mr. Greenhut tell you to look to the real estate and look to this mortgage for the payment of them?—A. No, sir.

Q. He did not?—A. No, sir.

Q. It was only he only wanted you to look to the real estate for the payment of this one specific piece of paper?—A. Yes, sir.

Q. Mr. O'Neal, you said in your affidavit that the plea interposed by Mr. Greenhut to the suit of the American National Bank against him was false and you believed that he knew it to be false. What was that plea, do you know?—

A. I think we went over the plea at the time, but—

Q. I am just asking you now if you know what that plea was?—A. I could not undertake to state the plea now. I remember going over the plea, though.

Q. Do you know what the nature of the plea was?—A. I could not tell you about the plea, but I remember going over the papers at the time.

Q. Where did you go over the pleas?—A. Mr. Blount and I went over the pleas together.

Q. Do you know who prepared the plea for Mr. Greenhut?—A. Blount & Blount.

Q. Mr. W. A. Blount?—A. I do not know; I think Blount & Blount prepared it.

Q. I will hand you the plea filed in that case, and which you say is false, and I will ask you to point out there what is false and what you believe was known by Mr. Greenhut to be false.—A. You want me to read the plea and state—

Q. Just point out what is false; you may read the plea if you desire.—A. That the defendant indorsed the acceptance sued on as a surety, and that before the maturity of the said acceptance the plaintiff was the holder of certain collateral securities of large value, much exceeding the amount of the acceptance sued on, deposited with it by the corporation of Baars, Dunwoody & Co., to secure all such indebtedness or liabilities of any kind.

Q. Is that true or false?—A. That is incorrect.

Q. In what particular?—A. The securities that we held for Baars, Dunwoody & Co. were deposited by Baars, Dunwoody & Co. to secure loans made to Baars, Dunwoody & Co.

Q. And made directly to Baars, Dunwoody & Co.?—A. Yes, sir.

Q. Didn't the securities that you held here cover any paper that might come into your possession upon which Baars, Dunwoody & Co. were primarily liable?—A. You mean securities that we held for Baars, Dunwoody & Co.?

Q. Yes, sir.—A. I think not.

Q. You had a regular form of hypothecation note, did you not?—A. A regular form?

Q. Yes, sir.—A. Some we did and some we did not.

Q. Can you produce the hypothecation that the American National Bank and from Baars, Dunwoody & Co. at the time?—A. No, sir.



Q. You can not?—A. No, sir.

Q. Will you state upon your oath that the hypothecation by Baars, Dunwoody & Co. did not cover any indebtedness that might be due to the bank from Baars, Dunwoody & Co.?—A. I will state under oath that the only collateral I know of was deposited by Baars were deposited to secure loans made direct to Baars, Dunwoody & Co.

Q. When were those securities deposited?—A. At the time we made the loan.

Q. When were those loans made?—A. They were made previous to the failure of Baars, Dunwoody & Co.

Q. How long before the failure of Baars, Dunwoody & Co.?—A. How long before the failure of Baars, Dunwoody & Co.?

Q. Yes, sir.—A. I do not remember; we loaned them money from time to time, all along ever since we have been here in business.

Q. They were not made within 10 days before the failure of Baars, Dunwoody & Co.?—A. I do not know.

Q. You say that these securities were not hypothecated with you on the regular form of hypothecation note?—A. I say they were hypothecated to secure loans that we made; some were hypothecated that way and some were not.

Q. What securities were hypothecated for the purpose of securing any indebtedness that you might hold against Baars, Dunwoody & Co. to cover any indebtedness of Baars, Dunwoody & Co. that might be due to you or to the American National Bank?—A. The hypothecations were specific to secure specific loans. There was a provision, I think, in some of the papers that would secure any indebtedness that might be due to said bank.

Q. What securities did you have hypothecated with you covering the last feature that you have referred to, that would cover any indebtedness that might be due to the bank? What did you have at that time?—A. Any indebtedness due to the bank?

Q. Yes, sir.—A. What securities that we had?

Q. Yes, sir.—A. I do not remember.

Q. Did you, at the time that that note became due, have any of those securities in your possession?—A. Baars, Dunwoody & Co.?

Q. Yes, sir.—A. We had some of Baars, Dunwoody & Co. at that time.

Q. Did you have some securities generally to cover to secure any indebtedness that might be due to you?—A. No, sir; all the hypothecations were specific and for the amounts stated in the notes.

Q. And for only that?—A. There might have been, as I said before, and I think was a part of the paper, a clause in the notes saying that it would be good to us for any other amount of money that they might owe the bank.

Q. Then Baars, Dunwoody & Co. owed you the amount of that note, did they?—A. Baars, Dunwoody & Co.?

Q. Yes, sir.—A. Yes, sir.

Q. They accepted it?—A. Yes, sir.

Q. And you had securities covering just such indebtedness from Baars, Dunwoody & Co. to your bank?—A. I do not think I did.

Q. A moment ago you did say you had some hypothecations that covered any indebtedness that might be due by Baars, Dunwoody & Co.?—A. Yes, sir.

Q. Didn't that cover that \$1,500?—A. No, sir.

Q. Why not?—A. It was not sufficient amount to pay them.

Q. What was the amount of them?—A. The amount of the securities?

Q. Yes, sir.—A. The value of the collateral that we had from Baars, Dunwoody & Co. was worth about \$15,000.

Q. In this case, when you say that Mr. Greenhut has testified falsely, the defendant says that you were the holder of certain collateral securities of a large value, much exceeding the amount of the acceptance sued on. Is that so?—A. Which is that—the acceptance that was sued on, the \$1,500?

Q. Yes, sir; you held securities exceeding that?—A. Yes, sir.

Q. That was deposited with your bank by the corporation of Baars, Dunwoody & Co. to secure all such indebtedness or liability of any kind as were or might become due to the plaintiff—that is, to the bank—from Baars, Dunwoody & Co. That is true, is it not?—A. No, sir; those collaterals were deposited to secure specific loans.

Q. You said that some were deposited to secure any indebtedness?—A. No, sir.

Q. You did not say so?—A. I said there was a clause in probably one of the notes that stated that any excess of the collateral was applicable to any other claim.

Q. What was the amount of any one note that contained that clause?—A. I do not remember as to those amounts.

Q. Well, was—did it amount to the sum of \$15,000?—A. Which—that note?

Q. Yes, sir.—A. My recollection was \$20,000.

Q. And the collateral in that note was worth more than \$1,500?—A. Yes, sir.

Q. Now, point out where the falsity of that plea is—A. To secure all such indebtedness as that acceptance.

Q. Just read the whole clause there. You said that you had \$20,000 of securities there that was hypothecated to you generally to cover any indebtedness due to you?—A. No, sir; I said I thought that we had a note for \$20,000, with that clause in the note stating that any excess of this collateral should be applicable to any other claim.

Q. Then, you held collateral that would cover and protect that note?—A. No; I did not.

Q. Would not that collateral that you held, that \$20,000, protect that?—A. No; it was not enough to protect the \$20,000 and that.

Q. Mr. Greenhut, in his plea, does he say there was? Does he allege there was sufficient to pay the amount for which this hypothecation was made and this?—

A. I think Mr. Greenhut says here in the plea that I was the holder of certain collateral securities of large value, much exceeding the amount of the acceptance sued on deposited with it by the corporation of Baars, Dunwody & Co.

Q. He says, does he not, that the note was deposited with you to secure such debts as may accrue to you, and the property was worth—the securities were worth—a great deal more than the \$1,500? Is that not all he says?—A. I do not think so.

Q. Mr. O'Neal, do you know Donald McLellan, jr.?—A. I know a young man named McLellan here in town. I do not remember his given name.

Q. He is in the court room. [McLellan here called forward.]—A. Yes; I recognize Mr. McLellan.

Q. Did you on the day of this affray between yourself and Mr. Greenhut have any conversation with Mr. McLellan?—A. Yes, sir.

Q. Where at?—A. In the bank.

Q. Mr. O'Neal, what time of day was that?—A. I think it was about—I do not know; I guess it must have been about 11 or 10 o'clock.

Q. It was very shortly after the cutting, was it not?—A. No; I think it was an hour or two afterwards.

Q. Now, Mr. O'Neal, did you not tell Mr. McLellan that you came down the street—down the side of the street on which Mr. Greenhut was; that Mr. Greenhut called you in; that in talking over a business matter he called you a liar; that you resented this by striking him?—A. No, sir; I did not. I do not think I told him that.

Q. You do not think you told him that. Did you or not tell him that?—A. I did not tell him that.

Q. You did not?—A. No, sir.

Q. Did you tell him what the business matter was that you and Mr. Greenhut had been discussing?—A. I do not think I did. I think I told him it was some litigation between us.

Q. Didn't you tell him on that occasion that the trouble emanated from the suit that was commenced by Mr. Greenhut, as trustee, against Scarritt Moreno, the American National Bank, and others on the preceding Saturday?—A. I do not think so. I think I told him—I told him that the trouble was caused by the bankruptcy of Moreno, Baars, or something of that kind.

Q. Mr. O'Neal, have you ever been convicted of any crime?

(Counsel for respondent objects to the question.)

The Court. It has always been the practice here that any witness, including himself, can be asked questions in the criminal docket. In the prosecution of the criminal docket here, trial of criminal cases, it is a very common question, of which I can cite a dozen or more instances, whether or not the witness—does not matter what witness, any witness—has not been convicted of this or that or the other offense, not for the purpose of trying him for any other offense at all, but, under the rule, for the purpose of striking at his credibility. I will give you an exception.

(Counsel for respondent notes exception to ruling of the court.)

A. I was convicted once for shooting across the public road out in Covington County.

Q. At Andalusia?—A. Yes, sir.

Q. Mr. Stallings prosecuted you for that crime, did he not?—A. I do not think he did. I plead guilty to it.

Q. Were you indicted at that time for shooting across the public road?—A. Yes, sir.

Q. Were you not indicted at that time for shooting across the public road from the courthouse in Andalusia to Bradway's barroom at Lewis Harrison?—A. I was not indicted for shooting Lewis Harrison.

Q. Shooting at him across the public road—at Lewis Harrison?—A. I was not indicted for shooting across the road at him.

Q. What other times have you been convicted, if any?—A. I was convicted in Covington County once for carrying concealed weapons—a pistol.

Q. When was that?—A. That was some time while Stallings was solicitor.

Q. What else?—A. I do not remember to ever having been indicted for anything else.

Q. You say you were convicted for carrying concealed weapons in Covington County?—A. I think so; yes.

Q. Where else, Mr. O'Neal, have you been convicted?—A. I do not remember having been convicted of anything else.

Q. Don't you recollect having been convicted in Henry County?—A. No, sir.

Q. You were not convicted in Henry County for carrying concealed weapons?—A. I do not think I was.

Q. Didn't you plead guilty to a charge of carrying concealed weapons there about two years ago?—A. I don't think so; yes, I was.

Q. You were convicted there?—A. I pleaded guilty to it; yes.

Q. Well, what other times, Mr. O'Neal, have you been convicted?—A. I do not think of any others.

Q. Were you not charged in Henry County with having made a murderous assault upon one Simonton with a claw hammer?

Counsel for respondent objects to question.

Counsel for prosecution withdraws question.

Q. Mr. O'Neal, you were sued civilly for assault made by you upon one Mr. Simonton, were you not?

Counsel for respondent objects to question.

The COURT. If the question is to be followed up, it will be admitted; the question by itself is not admissible.

COUNSEL FOR PROSECUTION. It will be followed up.

COUNSEL FOR RESPONDENT. Note exception to the ruling of the court.

Q. Were there or was not there a judgment recovered against you in Henry County for a murderous assault made by you upon one Simonton?

Counsel for respondent objects to question as showing result of the suit and proving a judgment that is a matter of record. Objection overruled, and exception noted by counsel for respondent.

A. He sued me; Mr. Simonton sued me and recovered \$50.

Q. Sued you for what?—A. For damages, about a fight we had. He and I had a fight.

Q. The allegation was that you had struck him with a claw hammer, was it not?—A. Yes, sir.

Q. Do you know what became of Mr. Simonton after that?—A. Yes, sir.

Q. What?—A. He is in Pensacola now.

Q. He is?—A. Yes, sir.

Q. What time of day was it that you went to Mr. Greenhut's store on October 20?—A. That is the day of the difficulty?

Q. Yes, sir.—A. It was about 9 o'clock in the morning; maybe a little afterwards.

Q. You were—how long were you in his store?—A. I do not know. I guess I must have been in there something like five minutes.

Q. What part of the store were you in?—A. We were in the back part of the office.

Q. How far from the front entrance?—A. I suppose we were 6 or 8 feet.

Q. Do you call that the back part of the office—6 or 8 feet?—A. Yes, sir; I think it was.

Q. What is the size of the office?—A. I do not know how long the office is.

Q. About how long?—A. I suppose it is about 12 feet; may be longer; it might be 14.

Q. On which side of the office was Mr. Greenhut?—A. He was on the left side; that is, the west side.

Q. Was he standing with his back against the desk?—A. I do not remember as to that.

Q. Where were you standing?—A. I was standing there at the corner of the palings, and I think he was standing immediately in front of me.

Redirect examination by W. A. BLOUNT, Esq.:

Q. Do I understand you to say that Mr. Greenhut knew that Baars, Dunwody & Co. was indebted to the American National Bank?—A. Yes, sir.

Q. And he knew that this mortgage made by Scarritt Moreno was intended to cover any part of that indebtedness?—A. Only the indebtedness that Moreno was liable on.

Q. But the indebtedness of Baars, Dunwody & Co., upon which Scarritt Moreno was liable?—A. Yes, sir.

Q. And that he knew that Mr. Egan had advised that the mortgage was a valid mortgage for that purpose?—A. Yes, sir.

Recross-examination by B. C. TUNISON, Esq.:

Q. When did you dispose of the property hypothecated to the American National Bank by Baars, Dunwody & Co.?—A. Some time in June, if my recollection is correct.

Q. Immediately after the assignment of Baars, Dunwody & Co., was it not?—A. No; I think it was—it must have been a week or two or three weeks after the assignment.

Q. How did you dispose of those securities, Mr. O'Neal?—A. The indorsers paid it.

Q. The indorsers on the original obligations paid it?—A. Yes, sir.

Q. And what did you do with the securities?—A. I surrendered the securities to the indorsers.

Q. Was Mr. Greenhut acting as a director of your bank at that time?—A. Yes, sir.

Q. When did he cease to act as a director of your bank?—A. He resigned about the time that we sued him.

Q. About July?—A. I think so.

Q. When did you sell to Foshee, McGowan, and Covington the \$13,000 mortgage of Scarritt Moreno?—A. Some time in June.

Redirect examination by W. A. BLOUNT, Esq.:

Q. You had had frequent discussions with Mr. Greenhut, you said, about this matter of indebtedness to the bank of this \$1,500 acceptance?—A. Yes, sir.

Q. Had he or not shown any heat or anger upon those occasions?—A. Mr. Greenhut appeared to be a little touched up and angered at times and at other times he seemed very pleasant.

Q. There had been, then, feelings between you on account of that acceptance?—A. Yes, sir.

Thereupon the respondent called one Dr. W. J. Hannah, who, being duly sworn, testified as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. You reside in the city of Pensacola?—A. Yes, sir.

Q. Have been residing here for some time?—A. Yes, sir.

Q. Do you know Mr. W. C. O'Neal?—A. I do.

Q. Do you remember the occasion of the affray between him and Mr. Greenhut?—A. Yes, sir.

Q. Did you at any time after that affray examine his person?—A. Mr. O'Neal?

Q. Yes, sir.—A. Yes, sir.

Q. How long afterwards?—A. I suppose a half hour or such a matter.

Q. Did you find any evidences of contusion or bruises upon his person?—A. I found some redness; yes, sir.

Q. Where?—A. On his side, sir.

Q. What side?—A. I do not know, but I rather think it was the left. I am not sure of that.

Q. What, in your opinion, was that occasioned by?—A. He said—

Counsel for prosecution object to witness stating what was said.

Q. Do not state what he said.—A. He looked as though he might have been punched.

Q. That was about a half hour afterwards, you say?—A. About that, sir. I do not know exactly.

Q. How did you examine—happen to examine him?—A. I went in his office by accident.

Q. And were requested by him to examine it?—A. Yes, sir.

Cross-examination by B. C. TUNISON, Esq.:

Q. You are connected with the American National Bank, are you not, as a director?—A. Yes, sir.

Q. Where was this injury?—A. It was on the side; I do not remember, but I think it was on the left side.

Q. And you say the only evidence of it was a redness?—A. And complaint he said he was very sore.

Q. What did you prescribe for it?—A. Nothing.

Q. There was no laceration?—A. No, sir.

Q. You say it looked as if he might have been punched. Would you have thought it was a punch if he had not told you so?—A. It was circumscribed. He certainly could not have received a circumscribed red spot in any other way than by coming in contact with something.

Q. But not necessarily being punched, was it?—A. It was a circumscribed red place.

Q. If he had come in contact with the corner of that desk would it not have been the same?—A. Possibly.

Q. Would there have been any difference?—A. I do not think a man could have told the difference.

Thereupon the respondent called one John McDavid, who, being duly sworn testified as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. Did you have any connection with the American National Bank?—A. I am a director, sir.

Q. Did you know of an acceptance upon which Mr. Greenhut was indorser and upon which Scarritt Moreno was indorser, made by Baars, Dunwody & Co. to the American National Bank?—A. Yes, sir.

Q. Did you ever hear any conversation between Mr. Greenhut and Mr. O'Neal with reference to the payment of that acceptance?—A. Yes, sir; I think it was some time in June; I am not positive as to the date of the transaction. I am one of the finance committee of the bank, and Mr. O'Neal called my attention to this piece of paper, then past due, and I suggested that he call Mr. Greenhut over and see what he proposed to do about it, and he came over into the bank while I was there, and Mr. O'Neal called his attention to this particular paper, which was drawn by Moreno on Baars, Dunwody & Co. and accepted by them, and indorsed by Moreno and Greenhut, and he said it was his indorsement and that he would pay it. "I expect to take care of all my paper."

Q. Do you know whether he paid it or not?—A. He has not paid it yet.

Q. Did you hear any further conversation between him and Mr. O'Neal with reference to it?—A. No, sir; nothing further said. He was in the bank only a few minutes.

Thereupon the respondent recalled W. J. Hannah, who testified as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. You said you were connected with the American National Bank; what was your connection, Doctor, during the summer?—A. I am a director in the bank and also a member of the finance committee.

Q. Do you know whether or not Mr. Greenhut had any knowledge of the mortgage made by Mansfield Moreno in connection with the loan or indebtedness of Scarritt Moreno of \$13,000 to the American National Bank?—A. Why, I knew it. The balance knew it; I do not see why he did not know it; it was before us.

Q. Before whom?—A. The finance committee.

Q. Who was the finance committee?—A. Mr. Greenhut, Mr. McDavid, Mr. Covington, and myself, and John Eagan.

Q. Did Mr. Greenhut, as a member of the finance committee, pass upon the paper, do you know?—A. Yes, sir.

Q. So that he knew of the loan and the character of it?—A. As I understand it, sir.

Q. Do you know—not as you understand, but do you recollect as to whether he did or not?—A. I knew he was present; and the way in which these things are done, every paper is handled, and Mr. Greenhut did when he was a member of the finance committee—he was the one usually that handled the papers—as it was passed around the table one would check and the other would call and I see no reason why—



Q. Do you recollect that this was before the finance committee, when Mr. Greenhut was present, and discussed?—A. It was, sir.

Q. And handled by him?—A. He was there several times.

Cross-examination by B. C. TUNISON, Esq.:

Q. Did you ever see that mortgage?—A. Yes, sir; I saw the papers.

Q. Did you see the mortgage—the \$13,000 mortgage?—A. Well, it is all in a bundle; yes; it is all done up together.

Q. Are you certain that you saw that mortgage?—A. Yes, sir. I know I saw it.

Respondent rests.

Thereupon the prosecution called in rebuttal Donald McLellan, who, being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. Where do you reside?—A. Pensacola.

Q. What is your occupation?—A. Reporter.

Q. Reporter on what paper?—A. The News.

Q. How long have you been engaged as a reporter on the News?—A. About 18 months.

Q. Mr. McLellan, do you remember the day of the affray between Mr. Greenhut and Mr. O'Neal?—A. I do not recall the date, but it was on Monday.

Q. You do recollect the occurrence, do you?—A. Yes, sir; I saw nothing of it, though.

Q. Did you, shortly after the occurrence, call upon Mr. O'Neal?—A. Yes, sir; I sought an interview with him.

Q. Where was he at that time?—A. In his office.

Q. Just state what he stated to you there.—A. He did not want to talk at all at first, and said—I told him what I wanted, 'o get his statement of it and I also wanted to see Mr. Greenhut, too; but Mr. O'Neal says that he was coming down the street, saw Mr. Greenhut and was speaking to him, and the lie was passed, and he struck Mr. Greenhut and Mr. Greenhut struck him.

Q. Did he, or not, say that Mr. Greenhut called him a liar?—A. I think to the best of my recollection that the lie was passed; I think that is what he said.

Q. Did Mr. O'Neal say anything to you about coming from a fighting family?

Counsel for respondent object to question.

Q. What else did Mr. O'Neal say? Mr. McLellan, did Mr. O'Neal say to you, as you recollect it, about as follows:

(Counsel for respondent object to witness being asked if Mr. O'Neal said so and so, but that he must be asked as to what he did say.)

The COURT. I will rule with you in this case on this occasion, but my recollection is that I have heard many a hard and desperate battle right on that point, counsel on the one side insisting that counsel on the other should use the exact word which had been spoken.

Q. Mr. McLellan, shortly after that occasion you made a statement in writing as to what took place, didn't you?—A. Yes, sir.

Q. Will you look at this statement?

(Counsel for respondent object to witness looking at paper until the witness has developed that he needs the writing to refresh his memory, and that has not been developed; otherwise it is the act of another party and not permissible for the witness to use.)

Objection overruled and exception noted.

Q. You wrote this statement, did you not?—A. Yes, sir.

Q. Where was this statement made?—A. At your office.

Q. At my office?—A. Yes, sir.

Q. At what time?—A. I think it was in the afternoon, after 4 o'clock, but what day I can not recollect.

Q. Was it about three or four days after the cutting?—A. Yes, sir.

(Counsel for respondent objects to counsel for prosecution asking witness the specific time instead of letting the witness state the time. He can ask when.)

Q. How long after the cutting did you make this statement?—A. I can tell you this way. It was the day when Mr. O'Neal was served with the writ of contempt.

Q. In this statement written by you, Mr. McLellan, you say——

(Counsel for respondent objects to counsel for prosecution making testimony by what a man said at an indefinite time after the occurrence.)

The COURT. It is a very common thing where a witness for any cause unknown to counsel that calls him makes a statement on the witness stand that is dif-

ferent from the statement which he has heretofore made to counsel. Counsel immediately has the right to treat him, cross-examine, and present him the paper made and ask him if he did not say thus and so at such a time and about this statement and which one is correct and which one is not. The testimony will only be admissible in that way and for that purpose.

Q. Mr. McLellan, what did you just state about the lie passing?—A. I think he said, Mr. O'Neal said the lie passed. He said the lie passed and then followed that up by saying, "He called me a liar, and you know I could not take that."

Q. Well, did he state what he did when Mr. Greenhut called him a liar?—A. He said I struck him.

Q. Did he tell you what it was about?—A. He said it was a business matter. We were discussing a business matter—matter of business, and I would not care to state what it was I mentioned—I says, "Did the suit filed Saturday have anything to do with it?" and he hesitated a while and said it did.

Cross-examination by W. A. BLOUNT, Esq.

Q. Your business, I believe you say, is that of a reporter?—A. Yes, sir.

Q. Part of your business is to go into court and impeach what persons have said by saying what they have said to you, is it not?—A. What is that?

Q. It is part of your business to go into court and impeach what persons have said, their testimony, by saying what they have said to you—has that not been your practice frequently of late?—No, sir.

Q. Has it not been your practice to go into the criminal court for the purpose of contradicting persons by saying what they had said to you as a reporter?—A. Only one.

Q. Upon what occasion was that?—A. The burglary cases.

Q. Now, why was it just now, when you were asked by Mr. Tunison about the lie, and he asked you twice, you said that what Mr. O'Neal said was the lie passed and did not say anything about Mr. O'Neal saying that Mr. Greenhut had called him a liar?—A. Just recalled it.

Q. Why was it at that time you simply said Mr. O'Neal said that Mr. Greenhut—that he struck Greenhut without making it follow the fact that Mr. Greenhut had called Mr. O'Neal a liar; just recalled that?—A. Yes, sir; just answered the question.

Q. Did Mr. O'Neal say anything to you about this matter arising out of the Scarritt Moreno bankruptcy matter?—A. He did not mention that. Just said—I asked him, "Did the suit of Saturday have anything to do with it?" and he said, "Yes"; but he did not say that for publication.

Q. But you are publishing it now, are you not?—A. Yes, sir.

Q. How did Mr. Tunison happen to get the fact from you?—A. I understood this writ had been filed, and I went to see Mr. Tunison and see whether—

Q. And then you told Mr. Tunison a thing which had not been given you for publication?—A. No, sir.

Q. You did not know that giving it to Mr. Tunison was publishing it, did you?—A. No, sir. I did not know that Mr. Tunison was Mr. Greenhut's lawyer.

Q. Why did you go to him?—A. I was told he had it.

Q. You did not know it, then?—A. Not before I went to his office.

Q. And yet when this was not for publication the first officer you went to in connection with it you told all about it—told what Mr. O'Neal had told you was not for publication?—A. I was talking man to man.

Q. But, Mr. McLellan, when you have an interview with a man and he tells you that it is not for publication, that means that it is not to be published, does it not?—A. Yes, sir.

Q. This was man to man, you say?—A. Not to be printed.

Whereupon the prosecution recalled A. Greenhut, who testified as follows:

Direct examination by Mr. A. C. TUNISON, Esq.:

Q. How much paper of Scarritt Moreno and Baars, Dunwody & Co., upon which you were indorser, did the American National Bank have at the time of the failure of Baars, Dunwody & Co.?—A. I could not say exactly. As well as I can remember, I think only paper was one for \$500, \$750 of Baars, Dunwody & Co. I have taken that up. There was another for three or four thousand, possibly a little over, of Scarritt Moreno's paper discounted by me and all taken up, and then there was thousands of dollars of other papers there.

Q. You took up all the paper of Scarritt Moreno or of Baars, Dunwody & Co. except this one piece of paper of \$1,500, did you not?—A. I think everything taken up, except possibly one paper of \$60.

Q. Overdue or not? All the other paper upon which you were liable of Baars, Dunwody & Co. or Scarritt Moreno, except this \$1,500 piece of paper, was provided for by you?—A. Yes, sir.

Q. Mr. Greenhut, why didn't you pay this \$1,500 payment?—A. Because I did not think I was treated right.

Q. Did you consult your attorney about that \$1,500 payment?—A. Yes, sir.

Q. Who was your attorney?—A. Mr. W. A. Blount.

Q. Did you state all the facts bearing on that paper to Mr. W. A. Blount?—A. I think I did.

Q. Did Mr. W. A. Blount prepare the plea that was filed in that case?—A. I think so; he sent it down to me.

Being hour for adjournment for noon recess, court thereupon adjourned until 3.30, both prosecution and respondent having closed their testimony.

#### AFTERNOON SESSION.

COUNSEL FOR PROSECUTION. May it please your honor, there were two witnesses that the prosecution failed to present this morning and which it is very desirous of now putting on the stand. They will not occupy more than five minutes.

The COURT. Very well.

Thereupon the prosecution called Lep. Mayer, who, being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. Where do you reside?—A. Pensacola, Fla.

Q. Do you recollect the occasion of the affray between Mr. Greenhut and Mr. O'Neal?—A. Yes, sir; I recollect it.

Q. Did you see any portion of it?—A. No, sir; I did not see any portion of it.

Q. Did you see Mr. O'Neal immediately after he and Mr. Greenhut were separated?—A. I was there.

Q. Did you see the knife that Mr. O'Neal had in his hands?—A. Yes, sir; I held the handle of the knife this way.

Q. I show you that knife, Mr. Mayer; is that the knife that Mr. O'Neal held in his hands?—A. No, sir; that is not the knife.

Q. What kind of a knife did Mr. O'Neal have in his hands?—A. It was a sort of bone-handle knife.

Q. What was the condition of the blade of that knife, Mr. Mayer?—A. It looked like it was sharpened freshly—sharpened to me. Of course, I got hold of the handle of the knife, and I cut myself.

Q. Mr. Mayer, did you have the knife in your hands?—A. I held Mr. O'Neal's hand and tried to take the knife out of his hand, but I could not, and Mr. Hyer came up, and in the meantime Mr. Hyer came up and says, "Turn loose," and they turned loose.

Q. They turned loose—who do you mean by they?—A. Mr. O'Neal turned Mr. Greenhut.

Q. What do you mean by "they," then?—A. Mr. O'Neal and Mr. Greenhut.

Q. Both turned loose. Well, now, you held Mr. O'Neal's hand—A. I was trying to take the knife out.

Q. And he had the knife in his hands. Did he not have the handle inclosed in his hands?—A. Yes, sir; a portion of it.

Q. And you saw simply a portion of the handle?—A. Yes, s'r.

Q. And yet you are able to swear that that is not the knife?—A. Yes, sir.

Q. You can?—A. I can swear that that is not the knife that I saw.

Q. And yet the knife that you saw was almost entirely inclosed in Mr. O'Neal's gripped hand?—A. I could see the top of it.

Q. That is all you saw?—A. Yes, sir.

Q. Saw the top metal?—A. Around here; this portion here was a little metal.

Q. This is always of metal, is it not?—A. Yes, sir.

Q. And during that time of excitement you were able to see what kind of a knife he had clinched in his hand?—A. I was there about five minutes.

Q. And tried to hold his hands for five minutes and wrenched his hands and tried to get it loose?—A. Yes, sir; tried to take it loose, but could not get it loose.

Thereupon the prosecution called one A. L. Rett'inger, who, being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. Do you remember the occasion of the affray between Mr. O'Neal and Mr. Greenhut?—A. Well, I saw it after the cutting was all through with—they were clinched.

Q. Did you see the knife that Mr. O'Neal had in his hands?—A. He walked right by me—he walked right by me with the knife in his hands.

Q. Did you see the knife in his hands?—A. I saw a portion of it: did not see the whole knife and blade.

Q. Did you see a portion of the handle of the knife?—A. About the ear of the knife.

Q. Is that the knife, sir [exhibiting to witness knife]?—A. That don't look like it. It looked to be a very bright blade and the handle looked to be either pearl or white horn.

Q. Was the blade——A. It was a slender blade.

No cross-examination.

Thereupon the respondent called in rebuttal one A. M. Hyer, who, being duly sworn, testified as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. Were you present at the time of this affray which has been testified to between Mr. O'Neal and Mr. Greenhut?—A. I was there at the wind up, sir.

Q. Did you see the knife that Mr. O'Neal had?—A. I saw the blade; yes, sir.

Q. Did you see it at the time that Mr. Mayer was trying to take it away?—A. I saw the blade of it.

Q. Was it so held that you could see anything but the blade?—A. I could not.

No cross-examination.

COUNSEL FOR PROSECUTION. It has been agreed between counsel that the case shall be submitted without argument.

The COURT. In that event, then, the court will render its decision at 10 o'clock to-morrow a. m.

#### MORNING SESSION, DECEMBER 9, 1902.

By the JUDGE. In the matter of the rule on W. C. O'Neal, to show cause why he should not be punished for contempt upon the statements set forth in the rule of contempt and affidavit of A. Greenhut thereto attached, the court, in going over the affidavit and the answer of the respondent, and considering carefully the testimony which was given yesterday, has come to the following conclusion:

The charges set out in the affidavit made by Mr. Greenhut, so far as they relate to the interference with an officer of this court are concerned, are in substance as follows:

Mr. Greenhut alleges in his affidavit that he was the trustee in the bankruptcy matter of Scarritt Moreno; that he had filed a bill against the American National Bank et al., of which the respondent O'Neal was president; the bill was filed on Saturday, October 18, of this year, 1902; he alleges that on October 20—Monday following that day—the respondent assaulted him because, as an officer of this court, he had instituted the suit aforesaid.

He alleges that the assault was made to interfere and prevent him from performing the duties as such officer, and that such assault did interfere with him, as such officer, in the performance of such duties.

The respondent, by his answer, admits that he knew Mr. Greenhut was trustee in the bankruptcy estate of Scarritt Moreno. This was further established by the record which was put in evidence. He admits that he knew the bill recited in Mr. Greenhut's affidavit had been filed against his bank, and he alleges, further, that Mr. Greenhut knew said bill to be in fraud of the bank.

He admits that he went to the office of the officer of this court, Mr. Greenhut, to reproach him for having brought the suit mentioned, and he asserts that he did reproach him for bringing the said suit, and he asserts that Mr. Greenhut knew when the suit was brought that there was no foundation therefor.

Up to this point in the matter there is little conflict in the statements of either party, but from this point on the statements of the affiant, Greenhut, and the respondent, O'Neal, do not agree. Mr. O'Neal interpolates into his answer something about another suit which the bank had brought against Mr. Greenhut and that part of the conversation which he had with Mr. Greenhut was in regard to that suit. This Mr. Greenhut denies. Mr. O'Neal says, however, that the principal conversation that he had on that occasion with Mr. Greenhut was in regard to the other suit which had been just brought on Saturday, the 18th.

and not as to the suit that had been brought a month or two before by the bank against Mr. Greenhut. From this point on there is a direct and positive contradiction by the affiant and by the respondent in most of that that is important and critical in this case, and the court is compelled, in deciding the case, to say who is stating the truth about it. From that position there is no escape.

Mr. Greenhut says, in a general way—without reading his statement or following his testimony—that after a conversation with himself and O'Neal about this transaction, that O'Neal made some remark and they had some words passed which were not pleasant and that Mr. O'Neal started to the door and that he, without thinking or suspicisioning any trouble, started after him and within a short distance of him; that suddenly, and without warning or any suspicion, that Mr. O'Neal turned with a knife and assaulted him, cutting him in the way shown to the court, which was a very serious way. I do not care to say much about it further than this, that it seems to the court that it was the merest accident in the world that Mr. Greenhut's life was not taken and that he was not forever prevented from appearing in this court to—or anywhere else to—attend to any duties whatever.

Mr. O'Neal says that they had some words; that perhaps in this connection it would be fairer to Mr. O'Neal to read what he swears to in his answer: When the respondent turned to leave the office and when he had nearly reached the door, he turned and said to Greenhut, "Well, you know you lied about the Moreno acceptance, for you said that you would pay it," the Moreno acceptance being the negotiable paper hereinbefore mentioned. As the respondent turned, saying this, he noticed that the said Greenhut was following him, and, as he said it, the said Greenhut, who was short, stout, heavily built, and apparently much more muscular than respondent, struck the respondent, who is thin and feeble, and forced him against the railing in said office. That respondent shoved the said Greenhut a little away from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocketknife and opened it in order to protect himself, and upon said Greenhut rushing again upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

That it is not true that the respondent at any time said to the said Greenhut that he, respondent, would settle the matter, but the facts are as hereinbefore stated.

Taking the respondent's own statement as true, the court holds as a matter of law that the cutting was entirely unjustifiable.

It is a recognized rule of law by everybody who knows any law that in order to justify anyone with an assault with a deadly weapon they must first retreat as far as they can get when assaulted, and when they can go no farther, if their assailant has something which is likely to endanger their life or do them great bodily harm, as I remember the language, only then are they entitled to assault anyone with a knife, pistol, or any weapon for self-protection. Otherwise, if there is an opportunity to flee they must go, and if they do not, and stand and what is commonly called fight, and they injure their assailant, they are responsible therefor. The testimony of both parties here says that the office door was open; the testimony of both parties places Mr. O'Neal so that he could have leaped out of the office instantly and gotten out of Mr. Greenhut's way, in case Mr. O'Neal's story is correct. He did not do so, according to his own statement, but according to his own statement says that he would not fight in the office, but if he would come into the street he would fight. But Mr. Greenhut, as I have said, contradicts Mr. O'Neal flatly and Mr. O'Neal contradicts Mr. Greenhut flatly, and in disposing of this case the court must decide between them. There is no escape from that duty, unpleasant as it may be, and the court takes it up in this way. First, as to the reasonableness of the assault. Taking ordinary men having such an altercation as Mr. O'Neal says they had, ordinary men, what would be the natural effect of such a conversation in an office between two men? Would the one man, Greenhut, who was affronted and insulted, strike his assailant quickly in the face for the insult, or would he follow him and attempt to strike him in the back? If he were such a powerful and muscular man and did attempt to follow and strike, would that attempt have no more effect upon Mr. O'Neal than the red spots sworn to upon the side by Dr. Hannah? That is one way that the court looks at it.

Leaving the testimony of the two men out of the question and looking at the reasonableness of the situation, next take the two testimonies. The one



tells one story and the other the other. What must be done under those circumstances? No living witness testified to what he saw except the two parties. The court must dispose of the truth or falsity of those statements upon their sworn testimony and what additional light it can get, and in that connection it turns to the record and character of the two men for peace and good order and quiet. Eight or ten or a dozen of the best citizens of Pensacola appeared and testified, or it was admitted upon the part of the respondent that they would so testify, and their testimony was waived, that Mr. Greenhut was a gentleman of quiet, peace, and good order; in truth, at this hearing no intimation was made, no attempt was made to intimate, that Mr. Greenhut had ever had a quarrel, wordy quarrel even, with any living person. On the other hand, the record of Mr. O'Neal, as shown, was not of that character. I do not care to go over it.

It is not a pleasant task and I won't review it particularly, but simply refer to it as a fact that, taking the record of Mr. O'Neal on the one hand, showing his character and disposition and troubles that he has had in different places and the utter absence of everything of that character as regards Mr. Greenhut on the other, the court is compelled, in the direct conflict of testimony between the two men, to say that it believes Mr. Greenhut's story of this controversy and is compelled to disbelieve the story told by Mr. O'Neal. So much for the reasons for the finding.

I want to say, further, that in disposing of this case the court has no intention to interfere or in any way usurp the jurisdiction of the authority or action of any tribunal that may look to the matter between the State and Mr. O'Neal. The action that the court will take and feels compelled to take will only be such action as is necessary for the interference by Mr. O'Neal with the duties of an officer of this court. The sentence of the court will be in the matter that Mr. O'Neal will be confined in the county jail of this county for the term of 60 days.

COUNSEL FOR RESPONDENT. Your honor will, I assume, suspend the execution of that sentence for a half hour, in which we can present to the court the papers necessary for the perfection of a writ of error to the Supreme Court of the United States.

COUNSEL FOR PROSECUTION. I would like to raise the question, in the first place, as to whether that a writ of error in the matter of contempt does not lie, and, secondly, that even if it did lie there is no such thing as a supersedeas in a contempt proceeding.

The COURT. I will give Mr. Blount an opportunity to make a hearing. I wish to say here, in regard to supersedeas, that while I have granted three or four, perhaps, in 13 years I have always granted them on my own judgment—not where they were asked for in every instance, but where there was any ground to contend that there was a question of law involved. There was one in Dallas, Tex., that I granted on my own motion without being asked for it, because there was such a question of law. In 99 out of 100 cases in which they are asked there is no question of law, there is no question of law left which has not been disposed of, and the purposes would not further the ends of justice.

In the case at bar that question must be disposed of in the same way; if upon looking over these decisions the court is of the conclusion that there is, as counsel has very properly put it, a reasonable doubt in the mind of the court, a doubt which takes hold of the court's mind at all for the Supreme Court to go on, a supersedeas will be granted. It will only be refused in this case and in other cases when there is nothing for the court to pass upon at all. That is all I can say at present, and if the court makes an error it can be readily corrected.

COUNSEL FOR RESPONDENT. Will your honor be here at half past 3? I would like to present an oral argument on the question, perhaps.

The COURT. I desire to look at the cases in my room and read just what the court, the Supreme Court, has said. The court likes to read it itself and think about it and look at it. I have no objection to hearing counsel's views of it, but the court makes up its own idea, and can understand it better when it reads the cases itself.

Court thereupon took a recess till 3.30 p. m.

#### AFTERNOON SESSION.

The COURT. This being an unusual case, and so far as I know this particular proposition of law never having been decided, and the counsel very properly voiced the position of the court before adjournment that the court had no

personal feeling, no desire to oppress anyone illegally nor to imprison anyone illegally, I have no hesitation in saying that if Mr. O'Neal went to jail for 60 days and about that time or subsequently the Supreme Court should reverse my action, the effect would not be good in any sense on the community, and this court would feel very much chagrined—exceedingly so—no hesitation in saying so. I will avoid being placed in that position with a great deal of care. On the other hand, if the case goes up and the Supreme Court should affirm my action, then all criticism of this court's action is effectually disposed of when the highest tribunal has passed upon the action of this court. Those are, perhaps, in a measure, personal, but they are sufficient to the court to be worthy of mention. Much more important, I judge, is the fact there ought to be a ruling of that court upon this statute, and I really have decided, without any further discussion of the case, to allow the appeal, and allowing the appeal will allow the supersedeas bond until the bill is disposed of or until it is dismissed or whatever course counsel representing the court may deem best to take, and that will be the course without any further delay or discussion of the matter and for the reasons which I have assigned.

It is needless to say that after my action in this case has been disposed of, there will be no more supersedeas cases in similar cases while I sit here, and never having had a case like this, I have concluded to make this exception now and will allow the appeal and will allow a supersedeas bond. The court, under the circumstances, has no anxiety about Mr. O'Neal's going away, and a bond of \$1,000 will answer the purpose.

COUNSEL FOR RESPONDENT. The court will make an order allowing 15 days in which to present a bill of exceptions?

The COURT. Certainly.

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### HOUSE OF REPRESENTATIVES, *January 13, 1905.*

[Congressional Record, volume 39, part 1, pages 806 to 826.]

#### ARTICLES OF IMPEACHMENT DEBATED IN HOUSE.

MR. PALMER. Mr. Speaker, I yield such time as he may desire to the gentleman from Massachusetts [Mr. Powers]. Before he begins I would like to inquire how much time has been consumed on the other side and how much time has been consumed on this side.

The SPEAKER pro tempore. The gentleman from Maine [Mr. Littlefield] has consumed 4 hours and 25 minutes, and the gentleman from Pennsylvania [Mr. Palmer] has consumed 1 hour and 40 minutes.

MR. POWERS of Massachusetts. Mr. Speaker, this House has been entertained and instructed by two very able speeches. One was made by my friend the gentleman from Pennsylvania [Mr. Palmer] and the other by my friend the gentleman from Maine [Mr. Littlefield]. The former filled for years with credit and distinction the great office of attorney general for the Commonwealth of Pennsylvania, and the other gentleman filled with equal honor and distinction the great office of attorney general in his own State. These gentlemen have carefully studied the evidence before the House in this impeachment proceeding, and it is entirely evident from the speeches that they have made that they have reached diametrically opposite conclusions upon all the articles but three. I am reminded of the story that they tell of the jury that came in and reported a disagreement. The court criticized the jury, saying that they ought to agree; that there had been a careful trial. The foreman then arose and said, "Your honor, how can you expect this jury to agree upon the evidence when the opposing lawyers who have given months of study to the question could not agree upon the evidence?" So I say, Mr.

Direct examination by B. C. TUNISON, Esq.:

Q. Do you remember the occasion of the affray between Mr. O'Neal and Mr. Greenhut?—A. Well, I saw it after the cutting was all through with—they were clinched.

Q. Did you see the knife that Mr. O'Neal had in his hands?—A. He walked right by me—he walked right by me with the knife in his hands.

Q. Did you see the knife in his hands?—A. I saw a portion of it; did not see the whole knife and blade.

Q. Did you see a portion of the handle of the knife?—A. About the ear of the knife.

Q. Is that the knife, sir [exhibiting to witness knife]?—A. That don't look like it. It looked to be a very bright blade and the handle looked to be either pearl or white horn.

Q. Was the blade—A. It was a slender blade.

No cross-examination.

Thereupon the respondent called in rebuttal one A. M. Hyer, who, being duly sworn, testified as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. Were you present at the time of this affray which has been testified to between Mr. O'Neal and Mr. Greenhut?—A. I was there at the wind up, sir.

Q. Did you see the knife that Mr. O'Neal had?—A. I saw the blade; yes, sir.

Q. Did you see it at the time that Mr. Mayer was trying to take it away?—A. I saw the blade of it.

Q. Was it so held that you could see anything but the blade?—A. I could not.

No cross-examination.

COUNSEL FOR PROSECUTION. It has been agreed between counsel that the case shall be submitted without argument.

The COURT. In that event, then, the court will render its decision at 10 o'clock to-morrow a. m.

MORNING SESSION, DECEMBER 9, 1902.

By the JUDGE. In the matter of the rule on W. C. O'Neal, to show cause why he should not be punished for contempt upon the statements set forth in the rule of contempt and affidavit of A. Greenhut thereto attached, the court, in going over the affidavit and the answer of the respondent, and considering carefully the testimony which was given yesterday, has come to the following conclusion:

The charges set out in the affidavit made by Mr. Greenhut, so far as they relate to the interference with an officer of this court are concerned, are in substance as follows:

Mr. Greenhut alleges in his affidavit that he was the trustee in the bankruptcy matter of Scarritt Moreno; that he had filed a bill against the American National Bank et al., of which the respondent O'Neal was president; the bill was filed on Saturday, October 18, of this year, 1902; he alleges that on October 20—Monday following that day—the respondent assaulted him because, as an officer of this court, he had instituted the suit aforesaid.

He alleges that the assault was made to interfere and prevent him from performing the duties as such officer, and that such assault did interfere with him, as such officer, in the performance of such duties.

The respondent, by his answer, admits that he knew Mr. Greenhut was trustee in the bankruptcy estate of Scarritt Moreno. This was further established by the record which was put in evidence. He admits that he knew the bill recited in Mr. Greenhut's affidavit had been filed against his bank, and he alleges, further, that Mr. Greenhut knew said bill to be in fraud of the bank.

He admits that he went to the office of the officer of this court, Mr. Greenhut, to reproach him for having brought the suit mentioned, and he asserts that he did reproach him for bringing the said suit, and he asserts that Mr. Greenhut knew when the suit was brought that there was no foundation therefor.

Up to this point in the matter there is little conflict in the statements of either party, but from this point on the statements of the affiant, Greenhut, and the respondent, O'Neal, do not agree. Mr. O'Neal interpolates into his answer something about another suit which the bank had brought against Mr. Greenhut and that part of the conversation which he had with Mr. Greenhut was in regard to that suit. This Mr. Greenhut denies. Mr. O'Neal says, however, that the principal conversation that he had on that occasion with Mr. Greenhut was in regard to the other suit which had been just brought on Saturday, the 18th,

and not as to the suit that had been brought a month or two before by the bank against Mr. Greenhut. From this point on there is a direct and positive contradiction by the affiant and by the respondent in most of that that is important and critical in this case, and the court is compelled, in deciding the case, to say who is stating the truth about it. From that position there is no escape.

Mr. Greenhut says, in a general way—without reading his statement or following his testimony—that after a conversation with himself and O'Neal about this transaction, that O'Neal made some remark and they had some words passed which were not pleasant and that Mr. O'Neal started to the door and that he, without thinking or suspicisioning any trouble, started after him and within a short distance of him; that suddenly, and without warning or any suspicion, that Mr. O'Neal turned with a knife and assaulted him, cutting him in the way shown to the court, which was a very serious way. I do not care to say much about it further than this, that it seems to the court that it was the merest accident in the world that Mr. Greenhut's life was not taken and that he was not forever prevented from appearing in this court to—or anywhere else to—attend to any duties whatever.

Mr. O'Neal says that they had some words; that perhaps in this connection it would be fairer to Mr. O'Neal to read what he swears to in his answer: When the respondent turned to leave the office and when he had nearly reached the door, he turned and said to Greenhut, "Well, you know you lied about the Moreno acceptance, for you said that you would pay it," the Moreno acceptance being the negotiable paper hereinbefore mentioned. As the respondent turned, saying this, he noticed that the said Greenhut was following him, and, as he said it, the said Greenhut, who was short, stout, heavily built, and apparently much more muscular than respondent, struck the respondent, who is thin and feeble, and forced him against the railing in said office. That respondent shoved the said Greenhut a little away from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocketknife and opened it in order to protect himself, and upon said Greenhut rushing again upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

That it is not true that the respondent at any time said to the said Greenhut that he, respondent, would settle the matter, but the facts are as hereinbefore stated.

Taking the respondent's own statement as true, the court holds as a matter of law that the cutting was entirely unjustifiable.

It is a recognized rule of law by everybody who knows any law that in order to justify anyone with an assault with a deadly weapon they must first retreat as far as they can get when assaulted, and when they can go no farther, if their assailant has something which is likely to endanger their life or do them great bodily harm, as I remember the language, only then are they entitled to assault anyone with a knife, pistol, or any weapon for self-protection. Otherwise, if there is an opportunity to flee they must go, and if they do not, and stand and what is commonly called fight, and they injure their assailant, they are responsible therefor. The testimony of both parties here says that the office door was open; the testimony of both parties places Mr. O'Neal so that he could have leaped out of the office instantly and gotten out of Mr. Greenhut's way, in case Mr. O'Neal's story is correct. He did not do so, according to his own statement, but according to his own statement says that he would not fight in the office, but if he would come into the street he would fight. But Mr. Greenhut, as I have said, contradicts Mr. O'Neal flatly and Mr. O'Neal contradicts Mr. Greenhut flatly, and in disposing of this case the court must decide between them. There is no escape from that duty, unpleasant as it may be, and the court takes it up in this way. First, as to the reasonableness of the assault. Taking ordinary men having such an altercation as Mr. O'Neal says they had, ordinary men, what would be the natural effect of such a conversation in an office between two men? Would the one man, Greenhut, who was affronted and insulted, strike his assailant quickly in the face for the insult, or would he follow him and attempt to strike him in the back? If he were such a powerful and muscular man and did attempt to follow and strike, would that attempt have no more effect upon Mr. O'Neal than the red spots sworn to upon the side by Dr. Hannah? That is one way that the court looks at it.

Leaving the testimony of the two men out of the question and looking at the reasonableness of the situation, next take the two testimonies. The one



Speaker, that when these two distinguished gentlemen reach diametrically opposite conclusions it is well for us to undertake to determine for ourselves what this case really is. I regret, Mr. Speaker, that the gentlemen who have spoken to this House have shown a little too much zeal and a little too much partisan spirit in the discussion of a great judicial question. I can not but feel that this House under the debate, so far as it has proceeded, has proceeded under a misconception of its present duty. Now, what are we considering at this time? We are certainly not considering the question whether Judge Swayne ought to be impeached, because we have considered that question already and we have voted upon it, and this House stands committed to the proposition that Judge Swayne ought to be impeached. Why, Mr. Speaker, on the 13th day of December, after debate, after careful examination of the evidence—and the evidence before the House at that time was exactly the same evidence which is before the House at the present time—the House reached the conclusion that the resolution of impeachment ought to be voted, and we appointed a committee, and that committee notified the Senate that we had passed the articles of impeachment. At the time we gave notice that we had voted to impeach the respondent we notified the Senate that we would in due time present to them articles of impeachment.

Mr. PALMER. Mr. Speaker, I ask for order.

The SPEAKER pro tempore (Mr. Conner). Gentlemen, this matter under discussion is one of great importance and it is due to those who desire to hear that they should not be disturbed by those desiring to converse. We must have order, and gentlemen not desiring to cease their conversation will please retire to the cloakroom.

Mr. POWERS of Massachusetts. After the notice given by this House to the Senate we voted a resolution for the appointment of a select committee of seven to complete the pleadings in this case, and that committee having performed its duty has made a report. We have reported 12 articles of impeachment, 12 distinct charges, 12 counts under the indictment.

Now, what is the purpose of the debate at the present time? Is it for the purpose of determining whether or not Judge Swayne is guilty and ought to be impeached? We have passed upon that question already, and we are now to determine the form of trial which is to take place before the proper tribunal ordained by the Constitution. In other words, we have met in conference for the purpose of determining what shall be the form of the pleadings under which trial shall proceed. I assume that every gentleman present will agree that those pleadings ought to be in such form as to afford a fair trial both to the petitioners and the respondent, and I assume that every gentleman present will agree that those pleadings ought to be in such form as to determine the important question being agitated in this controversy between the people of the United States and Judge Swayne. More than that, Mr. Speaker, we are not called upon at the present time to discuss. Now, when the resolution was voted we did not undertake to pass upon any article of impeachment. A great majority of this House—a majority so large that a division was not called for—voted the resolution of impeachment, and they did that, I assume, upon the printed evidence then before the House, and that is the only evidence properly before the House to-day.



personal feeling, no desire to oppress anyone illegally nor to imprison anyone illegally, I have no hesitation in saying that if Mr. O'Neal went to jail for 60 days and about that time or subsequently the Supreme Court should reverse my action, the effect would not be good in any sense on the community, and this court would feel very much chagrined—exceedingly so—no hesitation in saying so. I will avoid being placed in that position with a great deal of care. On the other hand, if the case goes up and the Supreme Court should affirm my action, then all criticism of this court's action is effectually disposed of when the highest tribunal has passed upon the action of this court. Those are, perhaps, in a measure, personal, but they are sufficient to the court to be worthy of mention. Much more important, I judge, is the fact there ought to be a ruling of that court upon this statute, and I really have decided, without any further discussion of the case, to allow the appeal, and allowing the appeal will allow the supersedeas bond until the bill is disposed of or until it is dismissed or whatever course counsel representing the court may deem best to take, and that will be the course without any further delay or discussion of the matter and for the reasons which I have assigned.

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**COUNSEL FOR RESPONDENT.** The court will make an order allowing 15 days in which to present a bill of exceptions?

**The COURT.** Certainly.

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### HOUSE OF REPRESENTATIVES, *January 13, 1905.*

[Congressional Record, volume 39, part 1, pages 806 to 826.]

#### ARTICLES OF IMPEACHMENT DEBATED IN HOUSE.

**Mr. PALMER.** Mr. Speaker, I yield such time as he may desire to the gentleman from Massachusetts [Mr. Powers]. Before he begins I would like to inquire how much time has been consumed on the other side and how much time has been consumed on this side.

**The SPEAKER pro tempore.** The gentleman from Maine [Mr. Littlefield] has consumed 4 hours and 25 minutes, and the gentleman from Pennsylvania [Mr. Palmer] has consumed 1 hour and 40 minutes.

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Speaker, that when these two distinguished gentlemen reach diametrically opposite conclusions it is well for us to undertake to determine for ourselves what this case really is. I regret, Mr. Speaker, that the gentlemen who have spoken to this House have shown a little too much zeal and a little too much partisan spirit in the discussion of a great judicial question. I can not but feel that this House under the debate, so far as it has proceeded, has proceeded under a misconception of its present duty. Now, what are we considering at this time? We are certainly not considering the question whether Judge Swayne ought to be impeached, because we have considered that question already and we have voted upon it, and this House stands committed to the proposition that Judge Swayne ought to be impeached. Why, Mr. Speaker, on the 13th day of December, after debate, after careful examination of the evidence—and the evidence before the House at that time was exactly the same evidence which is before the House at the present time—the House reached the conclusion that the resolution of impeachment ought to be voted, and we appointed a committee, and that committee notified the Senate that we had passed the articles of impeachment. At the time we gave notice that we had voted to impeach the respondent we notified the Senate that we would in due time present to them articles of impeachment.

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Now, some of us may have voted in favor of impeachment because of the contempt cases; some of us may have voted for impeachment by reason of the nonresidence charge; some of us may have voted for impeachment by reason of the charge with reference to the appropriation of the property of the bankrupt railroad; others may have voted on account of the false certifications. Now, I care not what particular part of that evidence influenced the vote of Members of this House. This House said, by a large majority, that the evidence contained in this volume justified the passage of the resolution of impeachment. Now, suppose it should appear, and that is a probable case——

The SPEAKER pro tempore. Will the gentleman suspend a moment? A personal request has been made by your presiding officer to have gentlemen refrain from conversation in the Chamber. There are those here who desire to hear this discussion, and I ask of you, gentlemen, that you will accord to the speaker the hearing to which he is entitled. [Applause.]

Mr. POWERS of Massachusetts. Now, suppose it should appear that there is not a majority of this House in favor of any one article before it. That is, suppose it should appear that a majority of this House think that the respondent ought not to be impeached on the nonresidence clause, ought not to be impeached upon the false certification clause, and ought not to be impeached on any one of the 12 articles now before the House. Now, suppose we reach that conclusion. Where does that leave us? It leaves us in the position of having impeached Judge Swayne and of depriving him of the right of trial; because that trial can not go forward until these pleadings are completed. Now, would that be fair to the respondent; would it be fair to the petitioners? And the petitioners are the American people. On the other hand, are we not committed to the proposition of framing such pleadings as shall try the important issues in the controversy? Well, now, your committee in making this report reached the conclusion that there were five important matters of controversy, and we took those five matters and we covered them by 12 different articles. Now, it is a fair question before this House as to the form of these articles—that is, the question of pleadings—and everybody of this House, the House being committed to impeachment, of course is anxious that the pleadings should be in proper form, and I assume that every Member of this House is anxious that the trial, if a trial is to be had, shall be a fair trial, by which the great subject of controversy between the people and the respondent shall be fully at issue with the opportunity for the Senate to determine upon all those great questions of controversy. I agree, Mr. Speaker, that we might properly perhaps have brought before the House other subjects upon which there was evidence, but to my mind we have brought before this House the five matters of the largest importance. Now, suppose that it should appear after discussion and vote that this House decides in favor of the first three articles and no other. I would like, Mr. Speaker, to have this House consider what position it would be in in that event. In other words, we decide that the respondent shall go to trial upon those three articles which relate to the false certifications of expense. Well, now, you bear in mind, Mr. Speaker, that the piece of evidence upon which that charge was founded was discovered by accident during the investigation.

Speaker, that when these two distinguished gentlemen reach diametrically opposite conclusions it is well for us to undertake to determine for ourselves what this case really is. I regret, Mr. Speaker, that the gentlemen who have spoken to this House have shown a little too much zeal and a little too much partisan spirit in the discussion of a great judicial question. I can not but feel that this House under the debate, so far as it has proceeded, has proceeded under a misconception of its present duty. Now, what are we considering at this time? We are certainly not considering the question whether Judge Swayne ought to be impeached, because we have considered that question already and we have voted upon it, and this House stands committed to the proposition that Judge Swayne ought to be impeached. Why, Mr. Speaker, on the 13th day of December, after debate, after careful examination of the evidence—and the evidence before the House at that time was exactly the same evidence which is before the House at the present time—the House reached the conclusion that the resolution of impeachment ought to be voted, and we appointed a committee, and that committee notified the Senate that we had passed the articles of impeachment. At the time we gave notice that we had voted to impeach the respondent we notified the Senate that we would in due time present to them articles of impeachment.

Mr. PALMER. Mr. Speaker, I ask for order.

The SPEAKER pro tempore (Mr. Conner). Gentlemen, this matter under discussion is one of great importance and it is due to those who desire to hear that they should not be disturbed by those desiring to converse. We must have order, and gentlemen not desiring to cease their conversation will please retire to the cloakroom.

Mr. POWERS of Massachusetts. After the notice given by this House to the Senate we voted a resolution for the appointment of a select committee of seven to complete the pleadings in this case, and that committee having performed its duty has made a report. We have reported 12 articles of impeachment, 12 distinct charges, 12 counts under the indictment.

Now, what is the purpose of the debate at the present time? Is it for the purpose of determining whether or not Judge Swayne is guilty and ought to be impeached? We have passed upon that question already, and we are now to determine the form of trial which is to take place before the proper tribunal ordained by the Constitution. In other words, we have met in conference for the purpose of determining what shall be the form of the pleadings under which trial shall proceed. I assume that every gentleman present will agree that those pleadings ought to be in such form as to afford a fair trial both to the petitioners and the respondent, and I assume that every gentleman present will agree that those pleadings ought to be in such form as to determine the important question being agitated in this controversy between the people of the United States and Judge Swayne. More than that, Mr. Speaker, we are not called upon at the present time to discuss. Now, when the resolution was voted we did not undertake to pass upon any article of impeachment. A great majority of this House—a majority so large that a division was not called for—voted the resolution of impeachment, and they did that, I assume, upon the printed evidence then before the House, and that is the only evidence properly before the House to-day.



Now, some of us may have voted in favor of impeachment because of the contempt cases; some of us may have voted for impeachment by reason of the nonresidence charge; some of us may have voted for impeachment by reason of the charge with reference to the appropriation of the property of the bankrupt railroad; others may have voted on account of the false certifications. Now, I care not what particular part of that evidence influenced the vote of Members of this House. This House said, by a large majority, that the evidence contained in this volume justified the passage of the resolution of impeachment. Now, suppose it should appear, and that is a probable case——

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It has never been a question of controversy between the people of the northern district of Florida and Judge Swayne. It was something that was discovered in the course of the investigation as it went forward. In other words, if we adopt those first three articles and reject all the others, we go to trial upon issues which have never been agitated in the State of Florida. What kind of a position does that leave us in?

Mr. LACEY. Is not the logical result of the gentleman's suggestion that we ought to have had these articles brought in and have agreed on some of them before impeaching at all? In other words, has not the committee put the cart before the horse? For instance, one-fifth of all the House is in favor of the impeachment on one item and four-fifths are against it; one-fifth are in favor of impeaching on the next item and four-fifths are against it, and so on clear through, followed by a unanimous vote in favor of impeachment, but divided up into five sections, the House against impeachment on nine of them. Now, is not that the difficulty in which the committee involves us by bringing the proceedings in this form, and should we not have the specific charges voted on before formally impeaching before the bar of the Senate?

Mr. POWERS of Massachusetts. The answer to that, Mr. Speaker, is that the committee has followed exact precedents—the precedent in the Peck case has been followed in this case—and apparently the precedents have been the same in this country as in Great Britain as to method of proceeding; and when we have an impeachment trial of a judge only once in 74 years it becomes pretty important to follow precedents, and that is what we have done in this case. Now, I do not agree with my friend from Iowa [Mr. Lacey] that the present situation in any way embarrasses us. We have voted that upon that evidence Judge Swayne ought to be impeached, and therefore we have voted impeachment. Now, the only thing we are attempting to do is to frame articles which are in the nature of pleadings, or, if you please, counts under an indictment, by which the great questions of controversy out of which has grown this impeachment, in consequence of which the House has voted this impeachment, shall be put in proper form.

I think, Mr. Speaker, that this House will agree that we owe that to the respondent, and that we owe that to the petitioners, because I take it that Judge Swayne has never asked my friend from Maine [Mr. Littlefield] or my friend from California [Mr. Gillett] to undertake to shut out a hearing upon those four important matters which are covered by the nine articles of impeachment beginning with article 4. If Judge Swayne is to go to trial he wants to be tried upon the great questions in controversy which have arisen in his own district. He does not want to be tried upon a question which no more affects the people of his district than it affects the people of my judicial district in Massachusetts. If he is to be tried at all, he wants to be tried upon these questions which have been agitating the people of his district for many years.

Now, it strikes me, Mr. Speaker, that what has embarrassed this House in this debate is the fact that the committee taking this testimony saw fit to extend that generous treatment which it did extend to the respondent. You will bear in mind that the respondent was not entitled to give evidence in this ex parte hearing. He was not

entitled to be represented by counsel, and in no case can you find in the impeachment trials of this country where a respondent was ever permitted to go before a grand jury that was framing an indictment and attempt to persuade them from framing the indictment which was under consideration. That was not the case of Pickering, who was impeached, nor the case of Peck, who was impeached, and it is not the usual case in the criminal procedure of this country.

And yet my friend from Pennsylvania [Mr. Palmer], my friend from Alabama [Mr. Clayton], and my friend from California [Mr. Gillett], who made up that select committee, being fair-minded men, said: "We will give the same opportunity to the respondent as we give to the petitioners." So he appeared by counsel. He gave evidence and they permitted him to file letters that he had received from people, letters which he had received long before there was any discussion or agitation over this question in his district. He filed letters of recommendation, letters which were written to President McKinley. He was allowed to say that he had been recommended for a position on the Supreme Bench of the United States. He was allowed on two occasions—and I think on three—to make long speeches before the committee, and the committee treated those speeches as evidence. Why, I never heard of such generosity before toward an accused, and the very fact that they permitted the respondent to do that has involved this House in a controversy as to whether he is guilty or not. I think that the committee attempted to do too much. They attempted to perform not only the duty imposed upon this House, but they attempted to perform the duties imposed upon the Senate. In other words, they undertook to determine whether he was guilty on these several counts, and they heard, I think, quite as much testimony from the respondent as they heard from the petitioners.

Now, the effect of that was it has thrown into this House a debate upon the merits, something that was never contemplated in impeachment proceedings, and so my friend from Maine gets up and says the respondent says so and so. The respondent was permitted to give an explanation of why he did this thing, and he was permitted to explain his conduct years after he had taken action upon this thing and that. And yet in spite of all that my zealous friend from Maine makes a speech running through something like four hours, and by insinuations and innuendoes charges the committee with being unfair to the respondent. Why, the fact is we, who represent the people of the United States, have the right to criticize this committee for having treated the right of the petitioners in the manner in which they did. If there were no evidence before this House except that which came from the petitioners, do you suppose this House would hesitate for a moment upon any of the articles now under consideration? The very reason why we do hesitate is because the committee has brought before this House evidence from witnesses they had no right to examine in an ex parte proceeding of this kind.

I do not propose, Mr. Speaker, to go into a discussion of the merits of this controversy. I take this position, and I ask the Members of this House to carefully consider that position and see whether or not I am right. I take the position that the only question before this body is putting the pleadings into proper form. I take the position that this House has no right to pass upon the question whether Judge Swayne

is guilty or innocent under any one of these articles. It is purely a question of probable cause, and upon the evidence submitted we have arrived at the rational belief that the resolutions of impeachment are justified. I, for instance, have reached that conclusion, I will say, upon the contempt charges; some other Member has reached it upon some other charge; but the body as a whole has said that the entire evidence justifies the impeachment, and the House has voted impeachment.

Now, the duty of this House is to so frame the pleadings that the important charges and allegations contained in the evidence shall be in a proper, regular form, so that the respondent and the petitioner may have a fair trial before the Senate of the United States.

Now, Mr. Speaker, with all seriousness, I ask this House if there is any other question before it. Why, you may take the Peck case—I was looking at it only this morning—and after they voted the impeachment they got together as to the form of the articles, and they discussed amendments as to the articles, but they did not discuss the merits of the articles; and you will find that to be the same in the Pickering case; and you will find it to be the same in the Belknap case, which was the last case of impeachment tried before the Senate.

We have started off upon an entirely different plan. We have undertaken to try, and my friend from Pennsylvania in his argument was undertaking to prove, that upon all this evidence respondent was guilty upon every charge. My friend from Maine undertook to prove that he was not guilty of nine of these charges, and then said he had doubt about the charge which he had reported in favor of some time ago. Why, if we are going to discuss the merits of this case, I do not imagine that there will be any revision of the tariff at the present session. If this debate is to go on in an unlimited manner, so that Members may make speeches of four and five hours, and that every man may state his own views——

Mr. PARKER. Will the gentleman permit an interruption?

Mr. POWERS of Massachusetts. I yield to the gentleman from New Jersey.

Mr. PARKER. Does not the gentleman think that the four hours spent by the gentleman from Maine were well spent in elucidation of the evidence?

Mr. POWERS of Massachusetts. In reply to that I will say that if the question before this House is the guilt or innocence of the respondent upon all these articles, it is well spent; if it is not the question before this House, it is thrown away.

Mr. PARKER. Is it not a fair thing to discuss whether a man may honestly be charged with different things—different things alleged to be crimes and misdemeanors? We all know that different things did not come up in either the Peck or Belknap case. Was it not in each a single thing—in the Belknap case the taking of money, and in the Peck case for contempt in one case?

Mr. POWERS of Massachusetts. In the Belknap case several reasons, and in the Pickering case one.

Mr. PARKER. Of the same character?

Mr. POWERS of Massachusetts. Why, substantially the same character. The difference in the case of Pickering, I assume, was the difference between intoxication on the bench and when he failed to



protect the right of some client by reason of refusing him a fair trial. It seems as if that was rather somewhat different. [Laughter.]

Mr. COOPER of Pennsylvania. Mr. Speaker, do I understand the gentleman to say that this is the only instance in which a defendant has been given the right to be heard?

Mr. POWERS of Massachusetts. I know of no other instance.

Mr. COOPER of Pennsylvania. Do you know whether or not the right was refused in any other instance?

Mr. PALMER. Yes; certainly.

Mr. POWERS of Massachusetts. I will not undertake to say whether application was made and refused. I think this is the first case where the accused person ever had the assurance to appear by counsel and ask to be heard before what practically amounts to a grand jury.

Mr. COOPER of Pennsylvania. The gentleman will recognize this, that the precedent whether or not the accused had the right to be heard by counsel would establish the views of this body upon the trial of cases of this kind, if they had been refused.

Mr. POWERS of Massachusetts. I believe we are bound to consider the evidence that is before us.

Mr. COOPER of Pennsylvania. Is not this an extraordinary remedy that is being sought by the people here?

Mr. POWERS of Massachusetts. It is the remedy which is provided by the Constitution. The Constitution provides that every judge shall hold his term of office during good behavior. Now, the only way by which you can test the question whether he has been guilty of bad behavior is by an impeachment trial. Take the case of a lawyer. If a lawyer is guilty of misbehavior, he is summarily disposed of and disbarred by the court. If a judge holding a tenure of office, such as a Federal judge holds, is guilty of misbehavior, the law permits the people to have that misbehavior examined only in one way, and that is by an impeachment proceeding.

Mr. COOPER of Pennsylvania. What I wish to get at is this: If this is an extraordinary remedy, does it not place upon the people who are seeking this remedy the burden of establishing their case?

Mr. POWERS of Massachusetts. It certainly does.

Mr. COOPER of Pennsylvania. Then, does it not require more than the establishment of a probable cause, which I understand your position to be?

Mr. POWERS of Massachusetts. I doubt if it requires any more than what is called a "probable cause." I do not see why a judge should stand in any different position than any other citizen upon the question of crime. In other words, all that we are bound to show is probable cause that the accused is guilty of the offenses charged in the different articles. That has been stated in another way. It was stated in the Peck case that what the House should find was that the evidence justified a rational belief that he was guilty.

But let me say, in connection with this, that when this case reaches the Senate it is not to be tried upon the same testimony that has been presented before this House. There is no part of this testimony in the form in which it now is that can be used in the Senate. It will be determined upon new testimony, oral testimony. Different wit-

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Mr. POWERS of Massachusetts. In reply to that I will say that if the question before this House is the guilt or innocence of the respondent upon all these articles, it is well spent; if it is not the question before this House, it is thrown away.

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Mr. COOPER of Pennsylvania. Mr. Speaker, do I understand the gentleman to say that this is the only instance in which a defendant has been given the right to be heard?

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Mr. COOPER of Pennsylvania. Do you know whether or not the right was refused in any other instance?

Mr. PALMER. Yes; certainly.

Mr. POWERS of Massachusetts. I will not undertake to say whether application was made and refused. I think this is the first case where the accused person ever had the assurance to appear by counsel and ask to be heard before what practically amounts to a grand jury.

Mr. COOPER of Pennsylvania. The gentleman will recognize this, that the precedent whether or not the accused had the right to be heard by counsel would establish the views of this body upon the trial of cases of this kind, if they had been refused.

Mr. POWERS of Massachusetts. I believe we are bound to consider the evidence that is before us.

Mr. COOPER of Pennsylvania. Is not this an extraordinary remedy that is being sought by the people here?

Mr. POWERS of Massachusetts. It is the remedy which is provided by the Constitution. The Constitution provides that every judge shall hold his term of office during good behavior. Now, the only way by which you can test the question whether he has been guilty of bad behavior is by an impeachment trial. Take the case of a lawyer. If a lawyer is guilty of misbehavior, he is summarily disposed of and disbarred by the court. If a judge holding a tenure of office, such as a Federal judge holds, is guilty of misbehavior, the law permits the people to have that misbehavior examined only in one way, and that is by an impeachment proceeding.

Mr. COOPER of Pennsylvania. What I wish to get at is this: If this is an extraordinary remedy, does it not place upon the people who are seeking this remedy the burden of establishing their case?

Mr. POWERS of Massachusetts. It certainly does.

Mr. COOPER of Pennsylvania. Then, does it not require more than the establishment of a probable cause, which I understand your position to be?

Mr. POWERS of Massachusetts. I doubt if it requires any more than what is called a "probable cause." I do not see why a judge should stand in any different position than any other citizen upon the question of crime. In other words, all that we are bound to show is probable cause that the accused is guilty of the offenses charged in the different articles. That has been stated in another way. It was stated in the Peck case that what the House should find was that the evidence justified a rational belief that he was guilty.

But let me say, in connection with this, that when this case reaches the Senate it is not to be tried upon the same testimony that has been presented before this House. There is no part of this testimony in the form in which it now is that can be used in the Senate. It will be determined upon new testimony, oral testimony. Different wit-



is guilty or innocent under any one of these articles. It is purely a question of probable cause, and upon the evidence submitted we have arrived at the rational belief that the resolutions of impeachment are justified. I, for instance, have reached that conclusion, I will say, upon the contempt charges; some other Member has reached it upon some other charge; but the body as a whole has said that the entire evidence justifies the impeachment, and the House has voted impeachment.

Now, the duty of this House is to so frame the pleadings that the important charges and allegations contained in the evidence shall be in a proper, regular form, so that the respondent and the petitioner may have a fair trial before the Senate of the United States.

Now, Mr. Speaker, with all seriousness, I ask this House if there is any other question before it. Why, you may take the Peck case—I was looking at it only this morning—and after they voted the impeachment they got together as to the form of the articles, and they discussed amendments as to the articles, but they did not discuss the merits of the articles; and you will find that to be the same in the Pickering case; and you will find it to be the same in the Belknap case, which was the last case of impeachment tried before the Senate.

We have started off upon an entirely different plan. We have undertaken to try, and my friend from Pennsylvania in his argument was undertaking to prove, that upon all this evidence respondent was guilty upon every charge. My friend from Maine undertook to prove that he was not guilty of nine of these charges, and then said he had doubt about the charge which he had reported in favor of some time ago. Why, if we are going to discuss the merits of this case, I do not imagine that there will be any revision of the tariff at the present session. If this debate is to go on in an unlimited manner, so that Members may make speeches of four and five hours, and that every man may state his own views——

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nesses, possibly witnesses entirely outside of those that testified here, will testify there and testify orally. The only question for us to make up our minds on is what pleadings are necessary.

Mr. GAINES of West Virginia. Will the gentleman from Massachusetts yield to me for a minute?

Mr. POWERS of Massachusetts. Let me finish this sentence and then I will be glad to. Having voted the impeachment, what pleadings are necessary in order to give a fair trial upon the important questions in controversy? I will now yield to the gentleman from West Virginia.

Mr. GAINES of West Virginia. I would like to ask the gentleman whether he or the committee have given any attention to the effect on this impeachment trial if it should not be concluded in the Senate before the 4th of March? Does an impeachment determined upon and entered upon by one Congress continue upon the expiration of that Congress? And if the Senate, proceeding to try this case *de novo*, hearing all the evidence, perhaps going into more detail than this House, should not have time at this session or before the 4th of March to conclude the hearing or reach any determination, what would be the effect?

Mr. POWERS of Massachusetts. I will say to my friend from West Virginia that my understanding of the law is that whenever the respondent is once before the Senate, he is before what is known as the impeachment court, and that court continues until the trial is completed; and the change in the Senate which will take place on the 4th of March in no way affects the court as it is constituted to try it. It is true that new members may come into that court, and when they come in, if they have not taken the oath, they must take it; but that constitutes a court and continues as a court until the trial is completed. That is my understanding.

Mr. GAINES of West Virginia. If the gentleman will permit me, there seems to me to be no question that the court continues, for the Senate is a continuing body; but suppose, for instance, the House appoints certain managers to present the articles of impeachment. The managers appointed by the present House may not be Members of the next.

Mr. PALMER. Then the House will appoint some more.

Mr. GAINES of West Virginia. Can the action of this Congress bind the succeeding one? I am asking only for information.

Mr. POWERS of Massachusetts. I will say to my friend that my understanding is that if there should be any managers appointed at this session of Congress and the trial should not be completed and the managers should go out, then this House may appoint other managers to take their place, just the same as if you start a trial and your district attorney gets removed or dies in office, the next district attorney takes it up and carries it on. I think that is the situation.

Mr. OLMSTED. Will the gentleman permit me to interrupt him for a moment?

Mr. POWERS of Massachusetts. Certainly.

Mr. OLMSTED. Not for the purpose of embarrassing or taking issue with him at all, but for information. I quite agree with the gentleman that the House having voted for impeachment, the proper question now before it is as to the proper framing of the articles of impeachment. I expect to vote for most, and perhaps all of these



articles submitted, but there is one of them concerning which I have some question, and it is as to that that I wish to ask the gentleman from Massachusetts.

The fourth article charges that said Charles Swayne having been duly appointed, etc., did unlawfully appropriate to his own use without making compensation to the owner a certain railway car, and that it was provisioned, etc., and that he took that car and provisions under a claim of right for the reason that the same was in the hands of a receiver appointed by him.

Now, in the first place, I labor under the impression gathered somewhere in this record, that the receiver was appointed by Judge Pardee, but I am not sure that I am right. Further, it seems to me that the evidence shows that he did not at the time appropriate this car violently or forcibly under a claim of right, but the evidence shows, on page 502, that the receiver sent it to him at his own instance—that is, the instance of the receiver.

Now, there is some evidence that 10 or 12 years afterwards, the judge being asked about that, did say that he thought he had a right to use it because it was in the hands of the court, which had charge of the receiver. Is it entirely accurate and fair to the judge to say that he appropriated at that time that car and provisions under a claim of right? In other words, ought not that particular article to be framed somewhat differently, so as not to do the judge any injustice, which neither the gentleman from Massachusetts nor any member of the committee would desire to do?

Mr. POWERS of Massachusetts. I think my friend from Pennsylvania raises a pertinent question, and that is as to the form of pleading. That is what we are here for. I do not understand that he raises the question as to the merits of that article.

Mr. OLMSTED. I think it was improper for him to use the car, and particularly the provisions paid for by the receiver, knowing, as he must have known, that when the receiver's account came before him it must include the expenses of the provisions and the car. I think that is as improper as it would have been if a hotel had been in the hands of a receiver and he had taken his family and stopped at the hotel without compensation. But, at the same time, I think the article ought to be so framed as not to misstate the facts or to do the judge any injustice.

Mr. POWERS of Massachusetts. Of course, in the evidence of Judge Swayne which came before the committee he claimed that he had a right to appropriate to his own use—that is, to make use of for his own personal benefit—the property of the bankrupt railroad company by reason of its being in custody of his court. I understand my friend from Pennsylvania to say that the word “appropriate” is not the proper word as a mere matter of pleading, and that perhaps the word should be that he “accepted without right the property of this road and used it for his own benefit when tendered to him by the receiver who was an officer of his court.”

Mr. OLMSTED. Yes; if at the instance of the receiver he accepted and made use of the car and provisions, knowing that the expense thereof must appear in the receiver's account, the article would be satisfactory to me.

Mr. POWERS of Massachusetts. I think there is a good deal of force in the position of the gentleman from Pennsylvania, and when

it comes up at the proper time it is a proper matter for amendment. It has not been my purpose, Mr. Speaker, to go into the merits of this controversy, for the very reason that I believe that we have settled the question of the merits so far as this body is concerned. I want briefly, however, to take up one feature of this debate which, to my mind, is hardly worthy of the House. It is the partisan spirit that is being shown both on this side of the House and on the other side of the House. The great body of the membership of this House are lawyers, many of them have held judicial positions, and a number of them have been attorney generals of their States.

We are sitting here as a grand jury, or, as has been stated, as the grand inquest of the Nation, to settle simply a question of pleading, and I am very sorry that yesterday, and to a certain extent this morning, there came into this debate what would appear to be partisan feeling upon the part of one side or the other.

Mr. WM. ALDEN SMITH. Mr. Speaker, I have heard the gentleman from Massachusetts [Mr. Powers] say two or three times that we are bound by that vote a few days ago. Now, I do not understand it so at all. In fact, if we are sitting as a grand jury, we have the same right that the grand jury exercised in Oregon a few days ago when they made an indictment and withdrew it a few days afterwards.

Mr. POWERS of Massachusetts. Had they filed the indictment with the clerk of the court at the time they withdrew it?

Mr. WM. ALDEN SMITH. Just a moment. I do not know of any rule of *res adjudicata* that should apply to this House. We have a right to reconsider this matter if we desire to. We have a right to take it up *de novo* if we want to.

Mr. POWERS of Massachusetts. There has been up to the present time no proposition to take it up *de novo*. There is no evidence before the House now that was not before the House when we voted the resolution of impeachment. I concede that men in this country have a right to change their minds; but this is not a tariff question; it is not a currency question. It is a question of law, and we settled this after a debate, and some extended debate, by a very decisive vote. Now, having settled it, we then went to the Senate and reported our action in voting that resolution.

Mr. WM. ALDEN SMITH. But some of us did not vote with the gentleman at all before, and are we bound by his vote?

Mr. POWERS of Massachusetts. Let me finish, and then I shall be glad to yield. We went to the Senate and said to the Senate that we had passed the resolution of impeachment. In other words, we filed our action with the Senate. Now, I do not undertake to discuss the question whether we have a right to rescind our action of December 13. I do not know. This is the first proposition that has been made to rescind it. It is rather a remarkable case when every member of the Judiciary Committee believes in impeachment, with the exception of my friend the gentleman from California [Mr. Gillett], and he believed in impeachment on December 13—

Mr. PARKER. No, sir.

Mr. POWERS of Massachusetts. But of course he has a right to change his mind.

Mr. PARKER. Will the gentleman allow me an interruption?

Mr. POWERS of Massachusetts. Allow me to make my statement and then I will yield. It appears that on December 13 every member

of the Committee on the Judiciary and a very decided majority of this House believed that the resolution of impeachment ought to be voted. Now, if anyone has changed his mind since that time, he must have changed it upon a consideration of the same testimony that was before the House on December 13.

Mr. PARKER. Will the gentleman permit an interruption?

Mr. POWERS of Massachusetts. Now I yield.

Mr. PARKER. I entirely contradict the statement of the gentleman that at the time of the adoption of that report I or those with me believed that an impeachment ought to be voted. We did report that as to one matter—the certificate of expenses, unexplained—there was ground of impeachment. Mr. Speaker, I think it fair to the gentleman from Massachusetts [Mr. Powers] to give him notice in brief of the position that I take. I say we reported that, unexplained as to motive, the certificates given at that time were grounds of impeachment, if false. There are many offenses which are indictable for which the grand jury does not indict, and I rose in my place here in this House in that debate when the previous question was moved in order to tell this House that it was within its wise discretion, looking at the practice which seems to prevail among different courts of this Union with reference to that statute, to say as to whether impeachment should be ordered.

Mr. POWERS of Massachusetts. Is this a question?

Mr. PARKER. I am giving the gentleman notice, I have already stated to the gentleman.

Mr. POWERS of Massachusetts. I yield to any privilege under the sun.

Mr. PARKER. I have already said to the gentleman that I thought it was fair to him that I should make a short statement of my position, so that he could answer me, as he is upon that point. I shall likewise at the point——

Mr. GILBERT. Mr. Speaker, will the gentleman from Massachusetts allow me to ask him a question?

Mr. POWERS of Massachusetts. I don't know whether I have the floor.

Mr. PARKER. Oh, the gentleman has the floor.

Mr. POWERS of Massachusetts. Very well. If the gentleman from New Jersey will yield to my friend from Kentucky to put a question, I should be glad, for the gentleman from New Jersey now has the floor.

Mr. PARKER. Oh, I can not very well do that. I have not the floor. I am simply giving notice that I shall likewise insist before this House that where different crimes and misdemeanors were alleged it was the duty of the House to have voted whether each class of matter reported was impeachable before debating that resolution of impeachment, and that the committee was entitled to the vote of a majority on each branch, and that now for the first time the real question of impeachment has come before this House to be determined, not by 5 men on one charge, 15 on another, and 20 on another coming in generally and saying that for one or another of the charges Judge Swayne should be impeached, but on each particular branch of the case.

Mr. POWERS of Massachusetts. Mr. Speaker, I now yield to the gentleman from Kentucky [Mr. Gilbert].

Mr. PALMER. Why do not you answer the question of the gentleman from New Jersey [Mr. Parker]?

Mr. GILBERT. I do not want to interfere with the line of the gentleman's argument, but I want to know this: You have two or three times disclaimed any desire to discuss the merits of the controversy, and you couple with that proposition another one that the only purpose of this grand jury or this House is to properly formulate the items. Now, how are we to intelligently formulate the items without an intelligent comprehension of the testimony? For example, the proposition is presented to the House whether or not we shall impeach him upon the charge of \$10 a day. Gentlemen voting "aye" on this testimony support that contention, and so with the other charges, so do not we necessarily have to discuss the testimony?

Mr. POWERS of Massachusetts. Mr. Speaker, that is a very fair question, and I assume that we had considered the testimony when we voted the resolution of impeachment. At that time the committee urged the impeachment upon five grounds, and those are the only grounds which are covered by the articles, and it was upon those five grounds and upon no other that the committee making the report urged the impeachment, and we had assumed that when the House voted the impeachment they practically said that a probable cause was made out in these five subject matters which were discussed before the House.

Mr. GILBERT. But the gentleman from Massachusetts on that occasion said that that was not the proper time to discuss the merits of the case.

Mr. POWERS of Massachusetts. I do not think I made that statement. I said this was not the proper tribunal to discuss the merits; that the question of guilt or innocence must be determined by the trial tribunal and that this was not the trial tribunal.

Now, I want to just make a little reply to my friend from New Jersey, who has asked me a question and, as I understand, has served notice upon us——

Mr. PARKER. I simply stated what my position was.

Mr. POWERS of Massachusetts. I understood him to say it was not quite fair for me to say that he favored the passage of the resolution of impeachment. I wish to call his attention to the report which is signed by him, Richard Wayne Parker being the name at the head of it——

Mr. PALMER. Written by him?

Mr. POWERS of Massachusetts. I judge by the excellent English in which it is written that it was written by my learned friend from New Jersey. This closes with the following language:

As a witness——

Referring to Judge Swayne——

he answered and explained every other charge——

Meaning every other charge except the charge of false certification——

This charge he made no effort as a witness to answer or explain. The inference from the record, on general principles, is that the charge is admitted to be true, and that he has no answer or explanation thereto. Whether a satisfactory explanation can be made we do not say. We must take the record as it stands.

Upon this record, unanswered and unexplained, we are of the opinion that in this particular an impeachable offense has been made out.

Now, I understand we have not the benefit of any testimony that was before us when my friend from New Jersey wrote that report. I do not understand that any explanation has been made by the respondent, and I do not understand that if my friend from New Jersey has changed his mind; upon what he has changed it. He has not changed it upon any explanation made by the respondent which appears in any official record or is properly before this house. If he has made an explanation in some other way through the press which has satisfied my friend that he ought not longer to continue with this report, that may influence him, but ought not to influence us.

Now, I want to say just this in closing, because I do not propose to occupy very much more time. You have here a unique and very peculiar situation. This is the first impeachment trial in 74 years. For three-quarters of a century the judges of this country have so conducted themselves as to meet with the approbation of the bar and suitors in their courts. Not a single dissent has come here from all these Federal districts throughout this country except the northern district of the State of Florida. For 10 years an agitation has been going on in that district. The legislature of Florida, voicing the sentiments of the people of that State, have voted by an almost unanimous vote in favor of memorializing Congress for the impeachment of this respondent. If I mistake not, they have passed that vote twice, once several years ago and once in 1903.

Now, it is claimed by some of my good friends on this side of the House that back of this agitation is politics; that the very fact, which is admitted, that Judge Swayne came from a Northern State, that he was identified with the Republican Party and sent down into Florida, is one of the causes of the dissatisfaction which exists in his district. I have examined that rumor somewhat carefully; I have examined that charge because I have heard it made off the floor of this House, and I have reached the conclusion that there is no foundation whatever to it.

Ever since the Civil War we have been sending from the North good lawyers, and some lawyers not as good, to hold positions as Federal judges in the Southern States. To-day a large number of the judges in the South come from the North and vote the same ticket that I vote. Judge Swayne refrains from voting, but most judges vote. So far as I am able to discover, there is absolute harmony to-day between the bar and the people of the South and those judges that went down from the North years ago to accept positions in the Federal courts of the Southern States.

So far as I am able to learn, politics have nothing to do with this controversy. I have great respect for the bar of the South. Ever since the days of the Marshalls and Pinckneys and Wirts the bar of the South has been an honorable institution, representing an honorable profession. [Applause.] I think it is fair to say that the reputation of the southern lawyer compares favorably with the reputation of lawyers of the other sections of the Union. But when you find in a State a situation such as exists in Florida, it is not singular that there is more or less partisan spirit. It is not singular that that agitation in Florida should permeate the State of Florida and permeate a great part of the southern section. Let me suppose, Mr. Speaker, a case. Let me suppose that in Massachusetts we had a Federal judge who was distasteful to the bar and distasteful to the people, so that there



would be agitation continued for years as to the question of his removal, and let me suppose that the Legislature of Massachusetts voted by a substantially unanimous vote in favor of memorializing Congress for his impeachment. And suppose that every one of the delegation from Massachusetts upon this floor came here charged by the instruction of the general court of the Commonwealth of Massachusetts to present articles of impeachment. Do you not think that that situation would be likely to generate partisan spirit among us in Massachusetts? And would not that partisan spirit extend through all the States of New England and would not my friend from Maine [Mr. Littlefield] and my friends from Massachusetts be here talking in language somewhat familiar to the language of the Representatives of the State of Florida? Why, it seems to me——

Mr. DAVIS of Florida. Mr. Speaker, will the gentleman permit an interruption?

Mr. POWERS of Massachusetts. Certainly.

Mr. DAVIS of Florida. I wish to say to the gentleman from Massachusetts [Mr. Powers] that, as one of the Representatives from Florida, I thank him for what he has kindly said of us.

I desire to say further, that we have two Federal judges in my State, one for the northern and the other for the southern district. They are both northern men and both Republicans. The judge of the southern district is James W. Locke, and there is no man in Florida more honored, more loved, and more respected by the people of that State than Judge Locke. [Loud applause.]

Mr. POWERS of Massachusetts. I thank the gentleman from Florida for his statement concerning the matter. It covers the situation which I assumed existed in the South. I have talked with lawyers upon the floor of the House, and I find that that situation exists in nearly all the States of the South.

Mr. GILLET of California. Will the gentleman permit me to ask him one question?

Mr. POWERS of Massachusetts. Certainly.

Mr. GILLET of California. Will you state the opinion of the lawyers in Pensacola and in the northern district of Florida concerning the character, integrity, and industry of Judge Swayne prior to the O'Neal contempt proceedings? I want you to state the opinion of the lawyers and the citizens of the northern district of Florida concerning the industry, morality, and honesty and integrity of Judge Swayne prior to the O'Neal contempt.

Mr. POWERS of Massachusetts. I think the evidence clearly shows, Mr. Speaker, that this agitation has been going on for years; that the Florida Legislature long before the O'Neal contempt proceedings had voted in favor of the impeachment of Judge Swayne.

Mr. GROSVENOR. Will the gentleman permit a question?

Mr. POWERS of Massachusetts. Yes, sir.

Mr. GROSVENOR. Is it not a fact that after that original and first resolution the State Bar Association of Florida passed resolutions strongly supporting Judge Swayne?

Mr. PALMER. For what?

Mr. POWERS of Massachusetts. I understood that they recommended Judge Swayne for some position that would take him out of the State. [Laughter.]

Mr. GROSVENOR. Will not the gentleman be frank? Did they not commend him for his great ability, honesty, and integrity?

Mr. POWERS of Massachusetts. There is published in the report of the hearings a large number of letters from lawyers in Florida——

Mr. GROSVENOR. But was not that the action of the State Bar Association?

Mr. POWERS of Massachusetts. I have not seen the recommendation from the State association, but I have seen letters from lawyers recommending him for a position on the Supreme Bench.

I do not undertake to say, to be perfectly fair, that Judge Swayne has not his friends in Florida; but they are not at the bar. There is no gentleman here who does not believe that there is a great controversy going on in that State, and that it is such a controversy respecting the respondent that it destroys the usefulness of the judge in the circuit for which he is appointed. That it became so was evidenced by the entire body of the people speaking by resolution passed by the legislature, and it has become a question that deserves, as it has received, and as it will continue to receive, the careful consideration of this House.

Now, I do not assume for one moment that the respondent in this case wants to have this House pass upon the merits of this controversy. Suppose we passed upon them; it is not a vindication of the respondent. Suppose we declined to indict him upon this charge or that. That is not a vindication of the respondent. If the position of the respondent and his friends be correct, he desires a trial upon all these great questions under controversy—the contempt case, the appropriation of the property of the railroad, the nonresidence case, and the false-certification case. It is the duty of this House, not only to the people of this country, but also to the respondent, to say that he has a right to be tried fairly upon proper pleadings upon all these questions of controversy, and if we fail to send these up to the Senate and to give to the people of America a right of trial upon these issues and to give to the respondent the right of a fair trial upon these issues, we fail to do our duty. We stand here pledged to see, after the passage of this resolution, that there is a fair trial so far as the pleadings are concerned, and no man will do his duty who seeks to prevent a trial upon the great questions of controversy which to-day are not only agitating the people of Florida but are interesting the people of every State in the Union.

We have the right to be proud of our judiciary. They have never asked us to protect them. They ask for no protection. Now, the American people have never sought a controversy with that great arm of our Government—the judiciary. They have come here at this time to us, and we have said that they were entitled to a fair trial. That trial to be fair should be a trial before the greatest court which can be constituted in the United States, on pleadings which shall show the intelligence and fairmindedness of this House; and you and I, Mr. Speaker, will be satisfied, as will the American people, with the result and the verdict of that trial. [Loud applause.]

Mr. PALMER. I yield such time as he may desire to the gentleman from New York.

Mr. PERKINS. Mr. Speaker, in view of the full argument that has been made by the members of the Committee on the Judiciary, I

should say nothing at this time were it not for the fact that I am not a member of that committee. The House must have seen that in this investigation a certain ascerbity of feeling has grown up in the committee—a certain partisan bias has naturally developed on one side or the other. We all desire, Mr. Speaker, to cast a fair, intelligent, and conscientious vote on this question. I never heard of Judge Swayne—I never heard Judge Swayne's name until I heard it in these proceedings in this House.

I never saw Judge Swayne. I knew nothing of the feeling in Florida, and I have endeavored conscientiously, by reading every word, I believe, that is contained in this book, to qualify myself to cast a conscientious vote; and I have thought that a few words may be of assistance to many Members of the House who, like myself, knew nothing of the situation and want to do the thing that is right. So, very briefly, I shall state to the House some of the reasons that will guide me in casting my vote. To show that I do not speak in entire accord with the Committee on the Judiciary, I will first say that I do not take the position of my friend, the gentleman from Massachusetts [Mr. Powers], who has just spoken. He said that we are bound by our vote; that we were only here now as a grand jury to frame articles of indictment. That is not my position. I believe that I am here to vote conscientiously on the question of whether or not I think Charles Swayne ought to be impeached.

If on reading this evidence I think he ought to be, I am bound to vote that way. If on reading this evidence I think he ought not to be, certainly I ought not to vote for his impeachment on any article. And, having reached the result that I think he should be impeached, then I do not care one straw whether I think the Senate will impeach him or will not impeach him. We have each of us to vote upon our own conscience, responsible to the people that we represent, as to whether we think the man is a fit man or an unfit man to be a judge; and if I think he is a man unfit to be a judge, it does not matter if I believe that every one of the ninety Senators of the United States will vote for his acquittal, I will not so vote in this House.

Now, Mr. Speaker, there is another thing to be considered. This man holds an office of great dignity and importance. He is one of the few men who hold office in the United States of America for life.

Nobody, President, people, nothing but the act of God Almighty can take him from his office so long as he fills it with good behavior. He holds an office of great responsibility, as any judge does, to decide the issues justly and fairly that are presented before him. He has great power by which he can do as Judge Swayne has done—commit men for contempt, or sentence one of his fellow-citizens to jail or to punishment—a power possessed by no one else, not even by this House of Representatives, unless a man refuses to answer a question before us.

Now, Mr. Speaker, where there is great power, where there is great dignity, there should be great responsibility. When we pass upon the question of good behavior of a judge of the United States we have a right to demand a high standard.

I shall not discuss all these questions here. I wish to say a few words on one subject, because it produced upon me as a lawyer the strongest impression as to Judge Swayne. It was not what was said by others, but what Judge Swayne himself said and what Judge

Swayne has done through a series of years that convinced me he was a man unfit to hold this office.

What have we a right to ask of a man who sits to administer the law? First and foremost, that he shall himself scrupulously, religiously, and honorably obey the law. He sits to punish criminals who disregard the provisions of the statutes. I will not vote that a man who has himself, as I believe from the words of his own mouth, for years evaded a statute of the United States is a fit man to continue to administer the law. And I am going to call the attention of the House only to what Judge Swayne said himself; not to one word of evidence that was given by any other man.

The statute says that a judge of a United States court shall reside in his district, and it is an unusual statute in this respect, that it contains the provision that if he fails so to do he shall be guilty of a high misdemeanor. Judge Swayne and every judge of the United States who assumes that office has notice in the very wording of the statute that this is not only a thing that he is bound to do, but that if he fails so to do he is guilty of the very thing for which a judge can be impeached, a high misdemeanor.

Judge Swayne was a United States judge in Florida, and he was living in St. Augustine, in his district. The boundaries of the district were changed, and it became necessary for him to remove from St. Augustine and go into the northern district. There is no doubt that that law was distasteful to him. He did not want to move. It may have been a partisan law; it may have been passed by a Democratic Congress with an idea of getting rid of him. I do not know and I do not care. It was the law of the land which he had sworn to administer.

Mr. PALMER. You are referring to the change in the boundaries of his district?

Mr. PERKINS. Yes; it rendered it necessary for him to change his residence. Now, let me read what he says. In my consideration of this case I had read down to that point and I had said, "There does not seem to be a very clear case against Judge Swayne;" but when I struck that statement I made up my mind that that man was an unfit man to be a judge. What did he do when the bill was passed changing the limits of his district, which made it necessary for him to move to Pensacola or somewhere else? He said:

My friends told me, Democratic friends told me, that they thought the next Congress would change it back; that there would be a Republican Congress and it would change it back.

It is as plain as the ceiling above us that for two years he had no thought and took no step about changing his residence. Why? Because he believed a Republican Congress would change the boundaries again. What would have been done if a man had been brought before Judge Swayne charged with a violation of the revenue law, and that man had said, "Oh, I did this, but I thought in two years a Democratic Congress would come in and repeal that law." Would Judge Swayne have pardoned him? Would he have dismissed him on that account? Are the gentlemen within the sound of my voice, Republicans or Democrats, willing to say that a man is a fit man to fill the office of judge who for two years knowingly violates the law of the land, a statute which to violate is a high misdemeanor, because

he thought it would be changed back and it did not suit his convenience to move?

Now, let us go further. It was not changed. What did he do? Why, to talk about his being a resident of his district, I say, with great respect to my learned friend from Maine [Mr. Littlefield], is nonsense.

He had no home there, he had no family there, he did not vote there, and he did not pay taxes there. What did he say before this committee? He says: "Oh, I regarded myself as a resident." And this judge of the court has the effrontery to produce as evidence of his residence the fact that he went up to Pensacola and stopped at a tavern and wrote his name, "Charles Swayne, City." [Laughter.] The intention is to be considered, but, Mr. Speaker, there must be facts. The intention as to residence is regarded by the law as characterizing a man's act. I can not say that I intend to go to Pennsylvania and by that declaration become a resident if I stay in New York. If I go to Pennsylvania, then my intention is evidence of whether I intend to leave New York, whether I have left temporarily or permanently; but this man did no act, he took no part or place in the State of Florida, certainly until 1901, and I think not until 1903. For five or seven years, it makes no difference which, he was no more a resident of Florida in the eye of the law than I was a resident of Florida.

The courts have passed upon this question, and in a case out in Utah the court said that this provision of residence meant an actual residence. Of course it does. It is not the nominal residence which sometimes determines a man's right to vote, but it is an actual residence, so that a litigant without trouble and loss of time, or loss of money, can find a judge ready at his hand; and the court says in interpreting this same statute, or a similar statute:

It is clear that residence means an actual as distinct from a constructive residence, and the law directing a district judge to reside within the district was manifestly not made—

This is what Judge Swayne forgot—

was not made for his convenience, but for the benefit of the people whose servant he was.

Now, Mr. Speaker, what does this judge, sworn to administer the law, say about this charge? Why, he comes in and says "I never heard that anybody was injured by my not being there."

Mr. Speaker, can a man be fit to administer the law who, when he himself has evaded it says, "Oh, I don't know that it did any harm." It is the plea of every criminal—of men very much lower in the scale than Judge Swayne—"Oh, I didn't comply with the law, but I don't know that it did any harm." Is he a fit man to sit as a judge who has the effrontery to come before this committee and, instead of seeking in every way to show that he was a resident, an actual resident, say, "Oh, I don't know that it did any harm; for nine long years, or for seven long years, I was only in the district of Florida 60 days out of a year, but I don't know that it did anybody any harm."

One thing more and I am done with this part of the case. He says, "I spoke to two or three real estate men," in his attempt, if it can be called an attempt, to show that he was seeking a residence there—"I spoke to two or three real estate men and they didn't



find a house to suit me." Is it an excuse for a judge for five long years to violate the law which says that he shall be a resident of the district, to say that two or three times "I spoke to a real estate man and I didn't find what suited me?" His duty was to be there; his duty was to be suited. Oh, Mr. Speaker, when he thought that he could safely evade the law, he found no house to suit him. He never would have found a house to suit him if it had not been for these proceedings. When these impeachment proceedings were finally started——

Mr. GILLETT of California. Will the gentleman allow me an interruption?

Mr. PERKINS. Certainly.

Mr. GILLETT of California. The gentleman said that he found no house to suit him until these proceedings were begun. Is it not true that he found a house in 1900 and moved in with his family and his furniture?

Mr. PERKINS. Well, assuming that; he was not a resident there for six long years. Perhaps the mutterings of the storm were heard even in 1900. For six long years he had violated the law, and he then found a house. There is no statute of limitations here. A man is impeached because his outward conduct shows the lack of inward grace. He will again do wrong when it is safe. I understand it is claimed, and that is my understanding of the evidence—the gentleman from California is much more familiar with it than I am—that in 1900 he was there only a few days, and it was a pretense of residence.

Mr. GILLETT of California. That is not the evidence.

Mr. PERKINS. Well, you may call it 1900 or 1903. The mutterings of the storm came, the impeachment was started, and until that time Judge Charles Swayne found no house to suit him. He was like the criminal lower down in the scale, who proceeds so long as he thinks he can do so with impunity, and when the officers of the law are after him he seeks to reform.

Now, Mr. Speaker, that is not the sort of man who is fit to hold the office of judge. Just one word more and I will be through. There are two things more that I desire to say as characterizing the manner of man he is. If I thought he was a fit man for judge, God forbid that I should vote against him, and if I think he is an unfit man, certainly I shall not vote for him. I care not what his politics may be. When the controversy was up on the question of the drawing-room car, Judge Swayne said, "Yes; I appointed 10 receivers of railroads," and this phrase struck me, and I call it to the attention of the House. "I have appointed receivers of 10 railroads," I come from a State where there are many applications for receivers of railroads and of other things. I know the class of judge, and every lawyer in actual practice knows the class of judge who has many applications for receiverships and that sort of work.

Some 25 years ago we impeached two judges in New York State, Barnard and Cadoza. They had appointed more receivers and done more work of this sort than any other 10 judges in the State of New York. There is a class of judge to whom attorneys of a certain class apply and to whom people who wish to be appointed receivers run promptly. This class of people evidently thought Judge Swayne was their man, and it is curious to notice that judges of that sort,

who are sought after to appoint receivers, are generally the judges we find accepting favors from receivers; the men who are sought for to put their friends in those positions are the men who themselves we presently find riding in drawing-room cars at the expense of the receivers. There is just one thing more I wish to speak of that also characterizes the man. The gentleman from Pennsylvania [Mr. Palmer] spoke about the proceedings for contempt. The gentleman from Maine [Mr. Littlefield] occupied hours in arguing whether or not those proceedings were wholly justified.

I have practiced law all my life in the State of New York among judges of high standing, judges who uphold the honor and dignity of their courts better than men like Judge Charles Swayne could ever do. I have never known a case—though I have sometimes known of cases of lawyers being rebuked by the court for some improper act or speech—where the judge of our supreme court of the State of New York found it necessary to commit lawyers to jail and to fine them, and to seek to strike them from the roll of attorneys.

Those are the things, Mr. Speaker, that in connection with all the rest are important as showing that the man is not fit, is not qualified, to be a judge; that he is not conducting himself with that good behavior which, and which alone, gives us the right to leave him in office. Mr. Speaker, I have finished what I have to say. I feel, and I am sure we all feel, that we are sitting here as jurors in a case of the people of the United States against Charles Swayne. If I believed he was fit to hold his office, surely I would vote against these articles. If I believe this evidence shows that he is unfit to hold the great office of United States judge, then I will vote as I shall vote. I will do what I can to remove from the bench a man who has brought dishonor on it. [Applause.]

Mr. PARKER. Mr. Speaker, there are some advantages in waiting for the closing of a case, but there are advantages also in speaking to you now, when you are ready to listen to what I have to say.

This is, unfortunately, the first time that the real questions on the impeachment of Charles Swayne have come fairly before this House. I say this advisedly. Impeachment is to be ordered for high crimes and misdemeanors. The House that sends the impeachment to the Senate must see good cause—I do not say “beyond reasonable doubt” or use the words “probable cause.” They must see good cause for each of the charges that they send to the Senate. Generally, there is but one charge. In the Belknap case it was charged in several items that money had been taken on public contracts.

In the Peck case there was but one charge as to a single punishment for contempt. In such cases the House can rightly and justly vote simply on the question of impeachment, for there is but one alleged misdemeanor. But in the present case, besides some ten other charges mentioned in the specifications, which carried a vote of the Florida Legislature, there are five which have survived to this day, namely: As to the Belden and Davis contempt, the O’Neal contempt, residence, the certificates for expenses, and the use of private cars. Three other matters were urged before the House in the majority report and on the motion for impeachment, namely, the matters of the Hoskins bankruptcy, the younger Hoskins contempt case, and alleged favoritism to Tunison (see Appendix A, Abandoned Charges). These last were vigorously supported by arguments, now abandoned,

that Judge Swayne had conspired to ruin the elder Hoskins's business, driven the younger Hoskins to suicide, and unjustly favored Mr. Tunison. We can not tell how many votes were divided among these eight issues. The vote on impeachment decided nothing as to any one of the alleged crimes or misdemeanors. My friends were divided. Some relied on one cause, some on another, each opposing the opinion of the others, whether on residence, expenses, private cars, or the various alleged abuses of the power over contempts. Some of my friends lay stress on the private car, others think it a mere courtesy done years ago.

Some of my friends believe that the action of the judge on the Belden contempt was a clear case of usurpation, while others think the judge was absolutely justified. My friend from Massachusetts, who spoke last, from the Judiciary Committee, I believe, has nothing to say on the matter of the certification of expenses, believing that the judge when he certified may have done so without evil intent, following a supposed judicial custom. On the other hand, he asserts that the O'Neal case was the worst thing of all, while others believe that as to O'Neal the judge did only his duty and that there is no possible ground of impeachment except on the charge as to certificates for expenses. Even on that charge the question of intent should be solved by every man according to his best judgment and conscience, and there is no evidence as to intent. I repeat, that the vote taken on impeachment was not a majority vote against Judge Swayne on any one of these charges. That majority was made up of some who believed in one charge and some who believed in another. No majority of the House has determined that they believe the respondent guilty of any one of these different matters.

Gentlemen tell you that the House is bound, and that the House would stultify itself if it voted against these charges. Mr. Speaker, if there be any stultification in the action of the House it was in taking a single vote, throwing together things which have nothing to do with one another, and this resulted from the earnestness and zeal—honest, but mistaken—of the leaders of the majority of this committee, for when I rose in my place to speak on this matter, as a member of that committee, and asked that the motion for the previous question should not be pressed, intending to ask this House to vote separately on the various necessarily separate branches of those charges, I was made to sit down, and the motion for the previous question was insisted on, and the House thus took a vote that does not determine any one of the questions, but leaves them all open separately. Thus we are now forced to determine for the first time whether a majority of this House, upon any one of these matters, will bring a charge of high crime and misdemeanor against a judge who has held for years an honorable position, not only by his office, but with the bar and in the community.

From pages 225 to 238 of the record we learn that in 1899 the lawyers and business men of Pensacola were eager to sign certificates as to his honor and integrity; not, as suggested, to get him out of Pensacola, but to make him judge of the circuit court for the fifth circuit, to preside over the courts of northern and southern Florida, as well as that of Georgia, Alabama, Mississippi, Louisiana, and Texas. The law firm of Liddon & Egan signed such a certificate, though Judge Liddon says he did not do so personally, and this is

the same Judge Liddon who was employed by O'Neal in 1903 to draw the resolutions for the Florida legislature and press them against Judge Swayne, and who is counsel against him now. Judge Swayne was acceptable to the bar. He served in districts of Alabama, Louisiana, and Texas (as by the certificates, p. 437) for some 745 days in 8 years. This was but a part of his work. In 1903 he was 202 days in the southern district of Florida, besides 113 days in his own (pp. 214, 215). We have yet to hear the slightest complaint, except from Pensacola, as to the satisfactory quality of his temper, honor, and judicial ability in the trial of cases in these courts, extending the whole range of the Gulf States, from Florida to Texas.

Mr. Speaker, we are told this man is unendurable and a tyrant. One gentleman has chosen to say, a common thief. I protest. We stand here, Mr. Speaker, with the functions of a grand jury before our Maker, on our oath to determine severally as to the several and different matters alleged by a majority vote of this House whether impeachment shall be pressed on each or any particular ground. There is no law to bind us to any rule, whether it shall be on probable cause or beyond reasonable doubt. It is sufficient that you and I must answer on our honor and our oaths whether we find it our duty to impeach him on each several charge. A majority of the House must answer upon each charge, because the Senate has to determine upon each charge, and the House must impeach upon each separate charge, in fairness to the man and in fairness to itself. When we were asked to vote upon 10 charges at once, that there was something impeachable contained in one or the other of those charges, we have already perhaps stultified ourselves in the mode of our procedure, but the previous question, as it was then ordered on motion of the chairman against the protest of a member of the committee, is responsible for that mistake.

I am speaking longer than I expected. It is perhaps time not wasted. I once tried an impeachment in my own State, and its trial upset legislative deliberation for four or five weeks. Whatever time is spent here in winnowing the true from the false is time well spent. Would that it had been done earlier! My friend from Massachusetts [Mr. Powers] does not even admit that it was for the benefit of the House that it has had the careful, exhaustive, and truthful presentation of the evidence by the gentleman from Maine [Mr. Littlefield]. No one can add to that presentation. But I have something to say on each matter as to the effect of that evidence.

First, as to residence. Judge Swayne, when appointed in 1889, was and had been for years a resident of Florida. He established himself with his family at St. Augustine. We do not know anything about his financial affairs. Three thousand five hundred dollars was his salary till 1891, and \$5,000 since. He seems to have had little else, for the banks carry his note for \$200. Such a salary leaves little to spare for wife or family. He had a mother who lived on the old homestead, in Delaware, where he spent his summers. He did not travel much or indulge in luxuries, and got his board at hotels as cheaply as he could. Those of you who have tried to live on \$5,000 a year I will ask whether it was easy for a judge to live on \$3,500 a year, even at the place where he established his family in eastern Florida, where it is healthy in summer, and whether he would have means to move the family instantly to western Florida

on the Gulf. He left his family at St. Augustine in 1894, 1895, and 1896.

Mr. Speaker, the statute provides that the judge shall reside in the district for which he is appointed. St. Augustine was in that district for which he was appointed, and his family stayed there, close by, and he himself established his residence in Pensacola, where he meant to go, by registering in the hotel, staying there or at a neighboring boarding house whenever there was work to do, and he also ordered his name to be put upon the registry roll. Gentlemen ask how often he was there.

Mr. HENRY of Texas. I would like to interrupt the gentleman a moment. I understood him to say that the statute says that the judge shall reside in the district for which he is appointed, and the gentleman's contention is that he resided in St. Augustine when he was appointed?

Mr. PARKER. Yes, sir.

Mr. HENRY of Texas. That he must continue to reside there forever if the district should be changed?

Mr. PARKER. No; I do not; but I say that there was no moral obliquity in his keeping a residence which he had taken up under that statute, until he could, with convenience, get another residence.

Mr. HENRY of Texas. Does the gentleman then assert that he should have removed his residence to the new district?

Mr. PARKER. I think he should have removed, and I think he did remove, but I think the circumstances were peculiar. He had a district composed of counties, a list of which I have here, which contained, in 1890, 128,626 people only, and contained, in 1900, 176,337 people only, not enough for a single congressional district; but they depended upon him to do work in——

Mr. HENRY of Texas. Does the gentleman from New Jersey [Mr. Parker] think that that is an answer to a positive statute?

Mr. PARKER. I am not saying that is an answer.

Mr. HENRY of Texas. I am trying to understand the gentleman from New Jersey.

Mr. PARKER. I have said to the gentleman from Texas [Mr. Henry] that he had a reasonable time in which to remove. I have said likewise to the gentleman that he did move by going there. I have said now that he was not required by court business to remain there as much as he would have had to remain in some other district, I mean in attendance upon court. This is not on the question of residence. This is on the question of employment. Thereupon, having little work to do—you can count the cases in that district on your fingers, as given in the Attorney General's report—he was assigned by the circuit judge and sent from place to place for important and onerous work, so that he did not seem to be in Pensacola as much as he would have been if he had not been taken away or had had business there to do.

Mr. HENRY of Texas. Will the gentleman allow me to ask him just one question?

Mr. PARKER. Go ahead.

Mr. HENRY of Texas. Do you hold that he became an actual resident of the new district as created by Congress?

Mr. PARKER. Yes; and I explain his absences as not inconsistent with complete residence. Judge Swayne himself explains carefully on



pages 578 to 580 that he understood that he must reside in his district; that he went to Pensacola and registered in the hotel as of that city; that he kept it as his home; that he looked around for a house; that he finally got one in 1900, and that his wife, his family, and furniture have been there ever since, for four years.

No statute of limitations binds the House of Representatives or the Senate. No statute binds them. But this matter of residence is purely a statutory crime and misdemeanor. There is no moral obliquity if the judge only does his work in his district. The offense is purely statutory. A statute created it and a statute can limit it, and this limitation is imposed in the strongest terms, terms that would seem to apply to impeachment itself. Section 1044, Revised Statutes, provides:

No persons shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 1046—

Which covers revenue and slave-trade cases—

unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed.

But whether the statute applies or not, impeachment will not be made on stale matters not involving moral character.

For four years he has resided in Pensacola beyond question. Before that time no one ever complained of his absence. No objection was ever made until long after his having a family home at Pensacola. He had always been there at every term—the number of his attendances are in the record—and for four years he has been living there in the midst of those people.

The House is asked to go back of four years and to find an impeachment, because over four years ago he did not live there. No complaint was made until a man named O'Neal was punished in November, 1902, for murderous assault on an officer of the court, and O'Neal had resolutions lobbied through the Florida legislature, employed five several lawyers, and ran the impeachment attacks upon the judge from 1902 till his death. I do not think the House is going to trouble itself with a charge of nonresidence over four years ago, or that impeachment is intended for matters that do not affect the moral character of the man or his present fitness to do his work. There are sound reasons for limitations as to indictment. Old matters may be made instruments of revenge, and they take the time of the courts, juries, and people over questions that are past and on which time has passed and wherein evidence may be hard to obtain. These reasons apply with tenfold force when the Senate and House of Representatives are to give up public business in order to become court or prosecutor on an attempt to disgrace an honorable United States judge for a crime and misdemeanor which was never such in intent, if it existed at all, and which certainly has failed to exist for over four years.

Mr. Speaker, what has been just said as to length of time applies with tenfold force to the question of the use of the private car in 1893, 11 years ago. In principle we may not believe in the prevailing practice as to the use of passes or private cars, but while it lasts we may follow it honestly and use a pass. A man's conscience can not be brought down to any one single fixed rule as to the kindlinesses that prevail between man and man. A dear friend may give a thing of value which may not be given by or accepted from a stranger. The

cigar or the meal or the wine or the entertainment will be taken from one man and refused from another. Each man's conscience must say in the special case where the line is to be drawn. In this case a receiver of a railroad in the year 1893, over 10 years ago, had a private car—a private car that was not for hire and never brought a dollar to the railroad company. It was the car of the president of the railroad, maintained as such presidents' cars are always, by keeping a porter in it and ready for use by the president in traveling over the road. It is part of the necessary and usual means for the operation of a road. It is explained by Mr. Axtell, who was the lawyer of the road. Durkee the receiver, is alive, but sick, and unable to appear.

Dearborn was the conductor on that car on one of the two trips. But nothing was heard on this matter until this fall, when a witness named Wurts came here after the original report was made. He had been a defeated candidate for Judge Swayne's office. He said that when he was in Florida, previous to 1895, he heard that Judge Swayne had been continually using a private car to come down from Delaware, and that Judge Swayne had admitted it to him, and that the judge was corrupt with reference to railroad management.

Now, the real facts are clear. Durkee, as receiver, had this private president's car. It goes free not only over that road but over all roads, because the car of the president of one road goes upon all other roads with free transportation. When the receiver found that Judge Swayne wanted to go to California, he appeared to have offered him the car to go to California, and the judge went to California and returned in that car with free transportation, but he furnished his own provisions. There happened to be in the car some little liquid, whether apollinaris or something else we do not know. We can only appeal to the record, which has proved Judge Swayne's expenses at half a dozen hotels, and there is not a single drink included. We must conclude that Judge Swayne is not a drinking man or we would have heard of it in this case.

He provisioned that car; he accepted the loan of his friend's house, you may say; he accepted the courtesy from the railroad of the use of that car. It cost the railroad nothing. It was, as was said, better running than standing still.

Now, this is not a thing that we commend. We have criticized it as at least unwise and tending to provoke criticism. But it is something that may and must be left to each man's conscience what courtesies of that sort he may accept. And, as pointed out by the gentleman from New Jersey [Mr. McDermott] yesterday, the accounts of all these matters have been audited, have been displayed in the courts, no objection has been made, and the stockholders and directors must be taken to have assented, and it is done. Now, the other and second case is simpler yet. In the same year, 1893—for there were only two instances of use of the private car—we find in the testimony of Mr. Axtell, who was the counsel of the road, a description of how it came to go to Delaware, and it is a case that might happen to anyone. In this case Mr. Axtell says:

Q. There has been testimony here of the receiver's car being sent for Judge Swayne and his family to Delaware. Was that while Mr. Durkee was receiver?—A. Yes, sir.

Q. Was it within your knowledge at the time?—A. It was.

Q. Do you know at whose instance it was sent?—A. The receiver sent it at his own instance.

Q. Within your knowledge?—A. Well, he told me so at the time. It came about in this way: Judge Swayne was at Guyencourt, I think, with his family, and was about to return to Florida in the fall, and Maj. Durkee, the receiver, suggested that he would send the car to Delaware for Judge Swayne to return, and he made application to the various roads to pass the car from Jacksonville to Delaware and return. The car was passed without expense to the receiver or to the railway property.

Q. Was or was not that car kept by the receiver for his use as the manager of the road?—A. Yes, sir. It was a car that came into his hands when he took charge of the property, and was used by the officers of the road—that is, the executive officers. They had another car used by the subordinate officers, and the receiver always used that car when he used any. And I will say there was no hesitation on the part of the receiver to ask other roads to transport these cars, because in the winter time there is scarcely a day that that road did not haul the private cars of other roads without compensation, as it is customary to do.

Here is a judge at his home in Delaware, who is going down to Florida, and he is notified that the private car of the receiver is coming up to Guyencourt, or is on the way, to take him down with his family when he wants to go. It is a courtesy to him, and he accepts it as a gentleman. Does it alter his position as a judge? Does it alter his action, or was there anything corrupt about it?

I feel like saying to myself, as well as to the rest, if it comes to a question of receiving things as courtesies which are sometimes of value, "Let him that is without fault among you cast the first stone." But this transaction is dead. It is back in 1893. It was not put in the original specifications; it was not a part of the case before the Florida Legislature; it was not brought in here as part of this case, but it came from a disappointed candidate for office, on the new testimony, after the report had been brought in. This House, like a grand jury, will wipe that charge from existence. We may not defend it; we may think there is too much private-car travel; that there are too many passes, and that an enlightened public conscience, or perhaps the action of the railroads, will stop this thing in the future and change our system. We are not defending it, but we do say that I can not accuse a man of moral obliquity in such an action as this.

MR. THAYER. Will the gentleman allow me an interruption?

MR. PARKER. Certainly.

MR. THAYER. Is it not a fact that that whole railroad was constructively in the hands of the court itself when it was in the hands of the agent of the court, the receiver, and is it not a fact that the court has got to pass on the debit and credit as kept by the receiver of everything received in and paid out for that railroad? And what does the gentleman say of the propriety of a judge accepting this donation from the receiver when he, the judge, was to pass on his account?

MR. PARKER. I think that that cost about \$20.

MR. THAYER. Well, that might vary. Isn't there a distinction between that and a railroad corporation giving free transportation to a judge from one place to another? In this case the receiver was the agent of the judge.

MR. PARKER. I do not know; we look into the intent upon these things. One thing must still be greatly dark—the motive, why they do it—if it were done honestly, as many another man has taken friendly favors from friends, no matter what the relations were. A lawyer is employed by one man, and then may rightly become attorney, not in the same case, against his former client. Each

man must keep himself upright in motive, though doing things in this world that may vary from one time to another. We should not hasten to condemn another's motive in a matter of this sort, which everybody seems to have thought right until this disappointed candidate for office came in on the tail of this case and put in these extra charges, which are now put first in the indictment, so that the dog comes in tail first instead of head first. [Laughter.]

Mr. STANLEY. Will the gentleman from New Jersey permit a question?

Mr. PARKER. Certainly.

Mr. STANLEY. I believe the gentleman has said that this private car cost about \$20.

Mr. PARKER. I said that was probably the cost of the provisions.

Mr. STANLEY. It went up to Delaware and got Judge Swayne?

Mr. PARKER. The car was never rented.

Mr. STANLEY. That car made the trip to carry Judge Swayne from one place to the other?

Mr. PARKER. The car went up with the porter and brought him back.

Mr. STANLEY. Would \$20 have carried that car through any one of the States? Would \$20 have furnished fuel for the train through any of the States over which he passed.

Mr. PARKER. Not a dollar was paid for the car. It was done as a courtesy from one railroad company to the other.

Mr. STANLEY. Was not the car drawn by an engine?

Mr. PARKER. Yes, it was drawn by an engine; but the engine charged nothing for its services.

Mr. STANLEY. How about the coal? Didn't that cost something?

Mr. PARKER. The same rule applies and I make the same answer. The president's car on different railroads is drawn from one railroad to the other without charge.

Mr. STANLEY. Did it have a special engine?

Mr. PARKER. Not at all.

Mr. STANLEY. Was there an engine to draw that car?

Mr. PARKER. No; it was shifted from one train to another—tacked on a regular train. I am very glad that the gentleman asked the question.

Let us next take up the case of O'Neal. I will put it to any man, what would he do in such a case if he were a judge upon the bench? Greenhut, the man that was stabbed, was appointed trustee in bankruptcy. The duty of such trustees by the bankruptcy act, section 47 in the second supplement to the Revised Statutes, on page 858, was "to collect and reduce to money the property and the assets for which they are trustees under the direction of the court, and to close up the estate as expeditiously as is compatible with the best interests of the parties in interest." He was, therefore, appointed trustee with these duties to perform under the command of the court. His duty was to collect all the assets, take them into possession, and distribute them. Now, mark that his duties were more than those of a sheriff in execution, who is likewise an officer of the court. If a sheriff had taken goods into his hands in execution, and anybody had gone to him, quarreled with him for taking them into execution, and stabbed him with a knife, no one would deny that under the statute a judge would

have the power to punish, because the statute says that the courts must punish for contempt in case of resistance by any party, jury, witness, or other person to any lawful writ, process, order, rule, decree, or command of the court.

Mr. BARTLETT. Shall do what with him?

Mr. PARKER. The court may have the power to punish by fine and imprisonment at the discretion of the court.

Mr. BARTLETT. Does that mean to punish under the rule for contempt, or proceed for violation of law?

Mr. PARKER. This is the section as to contempt, and if the gentleman will turn to the majority report on this case on page 22 he will find cited there the act of Congress which gives the courts the power to impose sentence. It is as follows:

The said courts shall have the power to impose and administer all necessary oaths and to punish by fine or imprisonment, at the discretion of the court, contempt of their authority: *Provided*, That such power to punish contempt shall not be construed to extend to any cases except the misbehavior of any person in their presence or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said court in their official transactions, and the disobedience or resistance by any such officer or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said court.

The majority report says that this was not resistance to any legal act, order, rule, decree, or command of the court. Why not?

Mr. BARTLETT. Mr. Speaker, may I ask the gentleman a question?

Mr. PARKER. I must go on now—not now; in a moment.

Mr. BARTLETT. I did not mean to provoke so much rudeness from the gentleman.

Mr. PARKER. I did not mean to be rude. I will be very glad to give an answer to the gentleman.

Mr. BARTLETT. I do not desire to interrupt the gentleman more.

Mr. PARKER. I beg the gentleman's pardon.

Mr. BARTLETT. I am sorry the gentleman gave so much rudeness.

Mr. PARKER. I am too much a friend of the gentleman to have him think any such thing.

Mr. BARTLETT. I beg the gentleman's pardon for interrupting.

Mr. PARKER. I beg your pardon. Come along.

Mr. BARTLETT. I was going to ask the gentleman if he does not know that the act of 1831 was passed as the result of the impeachment trial of Judge Peck, who insisted at his trial that he had the right to enforce his rules against people for contempt in his court the same as the English courts did, and that was the question on that trial; and it was to settle for all time that the judges of the United States courts could not have any such extensive powers that this act of 1831 was passed.

Mr. PARKER. I think I understand the gentleman's statement. I understood the statute was to limit the rules of contempt.

Mr. BARTLETT. And grew out of that case of Peck.

Mr. PARKER. I have heard so here; I never knew it before.

Mr. BARTLETT. I beg the gentleman's pardon if I am giving him the information.

Mr. PARKER. I heard it here from gentlemen who have made arguments on this case.

Mr. BARTLETT. I heard it long before I was a Member of Congress from people discussing that trial, who gave a history of the trial.



Mr. PARKER. I happen to be more ignorant. I never knew about the Peck case until it was mentioned in the Judiciary Committee and here in this matter. I have not studied it.

Mr. CLAYTON. Get the bound volume of the Peck case and you will find the original act printed in the back.

Mr. PARKER. Gentlemen, I am not talking to you about the Peck case.

Mr. Speaker, may I ask to strike out a little bit of this? I do not want to put this in the middle of my argument, and I now desire to go on.

Mr. BARTLETT. I think perhaps it will help it.

Mr. PARKER. I stated, Mr. Speaker, that this was an act of resistance to the command of the court. The command of the court was given to the receiver or trustee to take these assets into his possession. He is given a greater command than a sheriff or marshal under an execution. Under an execution the sheriff can only take the visible assets that he can seize. The receiver can sue for and take equitable assets that can only be recovered by suit. Under an execution the sheriff must only take so much of the assets as are sufficient to satisfy the claim, or at least he can not sell more. Under the bankrupt act the trustee must take all the assets. Under an execution the sheriff can desist by permission of the plaintiff without an order of the judge.

Under the bankrupt act the receiver, until he is otherwise directed by the court, must take and collect every asset of the bankrupt that he can find in anybody's hands, whether in possession or in action. That was the trustee's duty. As part of that duty he began a suit, and it was his duty to go on with that suit and prosecute it, and, Mr. Speaker, if any Member of this House were a judge upon the bench, I ask what he would do in such a case? The judge, by order in bankruptcy, has appointed and commissioned a trustee to collect these assets and the trustee has brought suit against a bank. The president of the bank comes and quarrels with the trustee for bringing suit, and draws a knife and lays that trustee up for weeks, and takes the chances of killing him. What would any court do? I ask whether that is not a resistance to the command of the court? True, part of the act was past—the bringing of the suit—but there was more to be done. The cases are consistent, and that of McLeod, in 120 Federal Reports, is complete on this subject. In that case, because of a past action of a commissioner of the court, an attack was made upon him, and although the commissioner had nothing more to do in that case it was held nevertheless to come within that section, and the assailant was arraignable for contempt because it was proven the commissioner was doing his duty, under orders of the court.

The McLeod case is stronger than the one before us. Here the act of the trustee was not complete. He was still going on with the suit, and the attack upon him by this O'Neal was an endeavor to make him stay his hand.

Mr. PALMER. That is a penal statute, is it not?

Mr. PARKER. No.

Mr. PALMER. Does the gentleman say that this statute is not a penal statute?

Mr. PARKER. I read the contempt end of it. It is not a criminal statute.

Mr. PALMER. It is a penal statute, and therefore strictly to be construed.

Mr. PARKER. Yes.

Mr. PALMER. Very well. Suppose you are going to indict O'Neal for resisting the command of the court. If the court had made an order or rule of any kind, he would be in the indictment in *haec verba*. Suppose you are indicting him for resisting a command of the court, what would you set out in the indictment?

Mr. PARKER. I am not supposing anything of the kind.

Mr. PALMER. The gentleman says that O'Neal resisted a command of the court. I would like to know what command of the court he refers to? Does the record show any command that the court had made?

Mr. PARKER. The court had ordered this receiver appointed. His duty, under the statute following upon the words in that order, was to collect and reduce to money the property and assets for which he was trustee. That was the duty imposed upon him. What is more, we do not have to look for law on that subject. The O'Neal case has been decided on appeal before Judge Pardee and the other judges of the circuit court, good judges all. I wish I had 125 Federal Reporter here, because only part of that was read by the gentleman from Maine [Mr. Littlefield], and anyone who looks at that case will see the court determined expressly that if the facts were as charged in those papers, then contempt of court under the statute had been committed. What is more, O'Neal obtained a certificate as to jurisdiction to the Supreme Court of the United States, a certificate granted by Judge Swayne. The Supreme Court of the United States ruled upon the case, and it said that the only question was one of fact whether O'Neal interfered with an officer of the court in the performance of his duty, and that such a question of fact could not be certified.

In the case before Judge Pardee the latter expressly ruled that a trustee in bankruptcy was an officer of the court and that he could not be interfered with. The whole case has been determined. It has been settled that this order for imprisonment of O'Neal was lawful, and if it was lawful I will leave it to any Member of the House if he had been a judge upon the bench and an attack had been made upon the trustee in bankruptcy that he appointed for the purpose of performing the official duty of collecting assets and that attack appeared to be in order to keep the trustee from going on with that duty, I ask whether exemplary punishment was not necessary and whether 60 days' imprisonment was not very small punishment? It makes me hot to find persecution lavished upon this judge for his honest action in this case. It is to be regretted, in my judgment, that his order for the punishment of O'Neal never took effect. It is still more to be regretted that it is owing principally to the money and the friends of this would-be assassin that the legislature of Florida was lobbied and a resolution passed against Swayne and that expenses of the prosecution of impeachment proceedings before the Judiciary Committee is now paid. If gentlemen wish to see and verify the truth of that statement, let them look at the record on pages 12, 13, 132, 133, 153, 481, and 482, showing five different lawyers who have

been engaged in this work in the pay of this man O'Neal and against Judge Swayne.

Let us turn to the Belden and Davis case. They were guilty of marked contempt and deserved rightly to be punished. It is a case that excites the sympathies of many Members in this House, that of the old lawyer Belden and the other lawyer, Davis, who were ordered to be fined \$100 each and imprisoned 10 days for contempt of court. The sentence was illegal. "And," instead of "or," was a mistake. It is an easy mistake to make when the statute says "fine or imprisonment." It is a common mistake to make, for in administering such statutes the sentence almost always includes imprisonment if the fine be not paid. But it is certain that it was a mistake. If the sentence had been imposed by the judge upon an ordinary poor outside person, who had no counsel and knew not the law, you might not be so sure. It was imposed here upon three lawyers—Belden, Davis, and Paquet. They were good lawyers. It was imposed at the advice of, perhaps, the most prominent lawyer in the State of Florida, Mr. Blount, whose testimony everyone should read. He looked over the sentence and obviously looked over the statute, because he said, "You can not disbar; you can only fine and imprison." The judge corrected it on that point; and everyone seems to have missed that little "or." There was no intention to do wrong in the form of the sentence. There can not have been any. If there had not been a mistake, the lawyers would have called the judge's attention to it, and the judge would have corrected it.

Mr. THAYER. Will the gentleman permit me to ask him a question?

Mr. PARKER. With pleasure.

Mr. THAYER. Can not you conceive it possible that these lawyers, who had been unjustly sentenced, remained quiet, knowing that a writ of habeas corpus would lie and that they would get their relief at once?

Mr. PARKER. Yes, sir.

Mr. THAYER. Then why do you blame them for not taking it out before the next day, when they could apply for the writ of habeas corpus?

Mr. PARKER. If you will look at the habeas corpus proceeding, you will find that application was made.

Mr. THAYER. They could take it out.

Mr. PARKER. It was taken out.

Mr. THAYER. They could have taken it out next day.

Mr. PARKER. The writ of habeas corpus was taken. I want to answer the gentleman's question; he has asked me one, and I want to answer it. My recollection is that the point as to the form of the sentence was not taken in the petition or petitions for the habeas corpus; and that even then the parties still did not know of it. (See the petition, pp. 329–30.)

Mr. THAYER. Suppose the full penalty of disbarment, fine, and sentence to the penitentiary had been imposed, and that they had been taken off in execution of that to the jail, could not they next day have sued out a writ of habeas corpus because of their unlawful committal?

Mr. PARKER. In this case just that happened, with the single exception of the disbarment; the sentence was only for fine and imprisonment. It was an unlawful sentence. Belden and Davis

did bring a writ of habeas corpus, and in the petition for it they did not set up that the sentence was illegal, but simply relied upon the question of jurisdiction of contempt itself, and did not even imagine that that sentence was illegal.

Mr. THAYER. The only effect of that is to convince me that the lawyers were about as ignorant of the law as the judge.

Mr. PARKER. We are all subject to make mistakes. When people ask me what is my profession, I say I hope I am a lawyer; I can not claim to be a great lawyer, for a great lawyer is a great man. Mistakes are made by the best lawyers, and that is the reason for the courts of appeal. But the proof shows beyond any reasonable man's doubt that it was a mere mistake in taking the law to be "fine and imprisonment" instead of "fine or imprisonment"; and we come, therefore, to the merits in the case and ask whether these men committed a contempt under the statute; and if so, whether they were honestly and fairly to be punished for it.

Now, I ask your attention for a moment to the facts on this particular matter, because they seem to have been misunderstood. If gentlemen who have copies of the record in this case will turn to the beginning of Judge Swayne's statement on this subject, beginning at the bottom of page 581, they will find that he says:

In the suits tried before me—

This McGuire suit had been tried before—

In the suits tried before me, involving the title to the extreme eastern portion of the city of Pensacola, the description given in the pleadings was as follows:

"That certain parcel or piece of land known as the Gabriel Rivas plat, containing 262½ acres, more or less, in the eastern portion of the city of Pensacola."

This, in a general way, was the only knowledge I had of its location. I knew nothing of its metes and bounds and did not refresh my mind as to its location at all.

So much for his knowledge, which is essential—

Mr. SMITH of Kentucky. Will the gentleman allow me to ask him a question?

Mr. PARKER. Certainly.

Mr. SMITH of Kentucky. Did not Mr. Hooten, the real estate man who sold it to him, or sold it to him for his wife, take him out and show him this land—show him all around?

Mr. PARKER. I am coming to that. He did not show him around this big tract that I am talking about—the Gabriel Rivas tract—or tell him the boundaries of that.

Mr. SMITH of Kentucky. He showed him lot 91.

Mr. PARKER. That is true; I am coming to that. Will gentlemen please not interrupt before I finish a little of my statement? This Maguire suit was as to what is called the "Gabriel Rivas tract." It was one of those sweep surveys, covering a large portion of the city, seemingly under some old Spanish or other grant, for the name "Gabriel Rivas," as well as "Caro," sounds very Spanish. I will read what Judge Swayne says:

In the summer of 1901 my wife had some money which she had inherited, and, desiring to invest the same, I advised the purchase of city lots. We looked over several and were pleased with the location of block 91 of the new city tract, and agreed with the agents to purchase. I knew nothing of Mr. Edgar, the owner of block 91—did not remember ever hearing his name before. He was not a party defendant in either of the suits of ejectment by the Caro heirs, although named in the pleadings of one of them, but no attempt at service was made so far as I am informed.

Not the slightest hint or suggestion had up to that time entered my mind that this block was a portion of the Gabriel Rivas tract, and only upon the receipt of Messrs. T. C. Watson & Co.'s letter of July 19, 1901, as contained on page 57 of the printed testimony, did I first learn of its connection with these suits.

Now, I turn to this letter from Watson & Co. They seem to have been agents for the sale of land, and they wrote him:

We have deed to block 91, New City, from Mr. Edgar, but he refuses to give a warranty deed to this block; he merely gives quitclaim deed. We have received a letter from him, in which he writes he is unwilling to give anything but a bargain and sale deed, as he is afraid of the old ——— Caro claim on this, which seems to be his objection. We have recently made an abstract of title of this property, and it seems to us we would just as soon have one deed as the other, but we lay the matter before you so as to have you perfectly satisfied. In case the deed is not satisfactory to you, of course, we will have to drop this deed or wait until you come home. Thanking you for an immediate reply.

Yours, truly,

THOMAS C. WATSON & Co.

He immediately answered, in July, 1901, saying:

Gentlemen, you may omit block 91 and send papers for the others along, and oblige,  
Yours, truly,

CHARLES SWAYNE.

Then, July 25, they wrote, sending him the papers for the other lots and leaving that one out. He had done what an honest man and an honest judge ought to have done. He said: "I can not buy anything that is in litigation before me. I prefer not to call another judge in to do the business I ought to do. I will not buy this lot or have my wife buy it."

He made no mistake in that; he did the right thing.

Mr. HENRY of Texas. I do not want to break into the continuity of the gentleman's argument, but I would like to ask him a question right there, if he will allow me.

Mr. PARKER. Certainly, I will.

Mr. HENRY of Texas. If Judge Swayne dropped out block 91 in July, why is it that, on November 5, 1901, he stated that a relative of his had purchased lot 91?

Mr. PARKER. Well, she had purchased or agreed to purchase it, and then did not take it.

Mr. HENRY of Texas. But he said to drop it out in July.

Mr. PARKER. It was dropped out.

Mr. HENRY of Texas. In July?

Mr. PARKER. The expression "had purchased" is pluperfect, is it not?

Mr. HENRY of Texas. He said that a relative had purchased the lot.

Mr. PARKER. I suppose your wife is your relative?

Mr. HENRY of Texas. Certainly; and if I were a judge and my wife had an interest in property which was the subject of litigation before me, I would recuse myself instantly.

Mr. PARKER. The gentleman from Texas does not seem to understand the evidence. Judge Swayne says that she had made an agreement for purchase.

Mr. HENRY of Texas. He didn't say that. On the 5th of November he said a relative, without saying it was his wife, had purchased lot No. 91.

Mr. PARKER. He had purchased it, but had given it up, and the agreement for purchase had been called off.



Mr. HENRY of Texas. Oh, no; he said a relative had purchased it, and on November 11 he said the relative was his wife.

Mr. PARKER. Now, Mr. Speaker, I am willing to allow interruptions, but I beg gentlemen not to interrupt me too frequently. I had got so far as the 25th day of July, 1901, and I am coming slowly down to the 11th of November. When I am trying to give an orderly statement of what happened in this matter, Members interrupt me with questions. I have got now as far as where Judge Swayne writes to them in July that his wife refused to take that lot. His wife had made an agreement of purchase, and he and she refused to carry it out, because the title was clouded and in litigation before him. He gave no reason, but, like a sensible man, he simply wrote and said, "Drop that out."

The next thing that appears to have taken place in the order of time was a suit brought by the agents, Watson & Co., against Edgar for their commission for making the sale of this lot. They were entitled to a commission, because Edgar had put the lot in their hands for sale, and they had done all they were asked to; they had found a purchaser, and then the title had failed, but by no fault of theirs. The lot had not been conveyed, the sale had fallen through, but they had done their work and were entitled to their commission.

That matter got into the newspapers, I suppose, or in some way it was known or rumored that Judge Swayne had bought this lot, and not knowing that the sale had been called off, it went around the community that he was the owner of the lot; and thereupon the attorney, Paquet, whether with Belden or not I don't know, addressed a letter to Judge Swayne at Guyencourt, Del., in which they told him that they understood that he owned a part of that property in litigation before him, and asked him to recuse himself. Remember, that was in October; that was three months after he had looked at the lot and thought of taking it and refused to take it, and he did not obviously know what these gentlemen were talking about, whether they meant that some of the other lots which he or his wife had purchased were within the McGuire tract, or whether it was this lot that she had refused, or what they meant.

Mr. SMITH of Kentucky. I should like to ask the gentleman a question.

Mr. PARKER. The gentleman is aware that I do not wish to be interrupted.

Mr. SMITH of Kentucky. I would like to know where the gentleman gets his facts when he says that when Judge Swayne got the letter from Paquet and Belden, he didn't know what they meant.

Mr. PARKER. I say how could he have known?

Mr. SMITH of Kentucky. He had traded for lot No. 91.

Mr. PARKER. The letter does not say lot No. 91. The letter has not been produced by them or anyone else. It has been described in the testimony. The gentleman from Wisconsin [Mr. Cooper] referred to it the other day. They do not seem to have said it was lot No. 91, or where it was, but they said, "You own a part of the property that is in this litigation, and you ought to recuse yourself." That is enough to make a judge think "Isn't this rather funny?" I think it was funny. If these gentlemen had gone to T. C. Watson & Co. and asked them about what that suit for commissions meant they would have learned that the suit was based on a sale that was

never carried out and the lot not conveyed to Judge Swayne or his wife. If they had gone to Edgar and asked him the same question he would have said the same thing. But these lawyers, without inquiry, accepted a mere street rumor and then wrote to Judge Swayne generally that he was interested in the property that was in litigation before him as a judge of the court, and asked him to recuse himself. I do not wonder that he refused to answer the letter until he found out what they meant, especially as he was soon going to be in Florida. This letter was written on the 16th of October.

Mr. RICHARDSON of Alabama. Mr. Speaker, I am very much interested in the gentleman's argument, and I just want the liberty of asking him one question for information.

Mr. PARKER. Is it upon this point?

Mr. RICHARDSON of Alabama. It is upon the purchase of that lot.

Mr. PARKER. Only on this point just where I am. I would like to get through the order of dates.

Mr. RICHARDSON of Alabama. It is on that lot which the gentleman has just been discussing with the gentleman from Texas [Mr. Henry], and I desire to get some information from the gentleman.

Mr. PARKER. If the gentleman will wait a little bit, I would be very much obliged. Now, I was saying that Judge Swayne knew on the 16th or 17th of October, when he got that letter, that he would be down in Florida before the 5th of November, for he was trying criminal cases there on the 5th of November, and it would take only about 20 days. He waited until he got there, and on the 5th of November he states that the counsel were before him and he told them the facts. Mr. Paquet has not contradicted it; Mr. Belden has not contradicted it, because he was not there—he was sick at that time and away. Mr. Davis says he was not employed as counsel, but Mr. Davis does say, I think it is on page 329, in his petition for habeas corpus, that Judge Swayne on the 5th of November made certain statements in court, and seemed to imply that he was there. ~~Time~~ he says that that petition for habeas corpus was gotten up on a blank form for both Mr. Belden and himself, and that he did not mean he wrote the letter of October 16, and nobody can tell exactly what he did mean in that petition.

Mr. PALMER. Does not the gentleman remember that Mr. Davis was a respectable member of the bar and swore positively that he never was employed in the case until Saturday night?

Mr. PARKER. Yes.

Mr. PALMER. Very well. Now, what is there to contradict his testimony except some——

Mr. PARKER. I am not contradicting his testimony.

Mr. PALMER. Then what is the gentleman trying to prove—that he was not a member of the bar?

Mr. PARKER. I am trying to prove something that the gentleman does not seem to understand. [Laughter.]

Mr. PALMER. That is right.

Mr. PARKER. If the gentleman will sit down and listen, instead of asking questions, he will likely find out.

Mr. PALMER. It is not my fault——

Mr. PARKER. It is the gentleman's fault. He interrupted me in the middle of a thought.

Mr. PALMER. It is not my fault. It is the fault of my intellect. That is the trouble. I am too dumb to understand.

Mr. PARKER. It is not that. It is the fault of the gentleman interrupting me when I was just about to tell him what the matter was. The gentleman prevented my speaking before, and he can not do it this time.

Mr. PALMER. Give it to us straight. [Laughter.]

Mr. PARKER. I am going to give it to you straight. [Renewed laughter.] Now, I have got so far as this. The record made up on November 11, 1901, reads as follows, page 324:

On Tuesday, November 5, 1901, at the time of the presentation of the said motion by the plaintiffs, that the court recuse himself, he had then stated, and now states, that he never agreed to accept nor ever accepted any deed to any portion of the said Cheveaux tract; that, as he stated, a member of his family, to wit, his wife, had, with money inherited by her from her father's estate, negotiated for the purchase of some city lots in Pensacola; that certain deeds in connection therewith had been sent to her in Delaware, one of them proving to be a quitclaim deed, and upon investigation and inquiry it was found out that the property in the deed was a portion of the property in litigation in the suit of Florida McGuire v. Pensacola City Co. et al., and thereupon, and by his advice, the said deed was returned to the proposed grantors, with the statement that no further negotiations whatever could be conducted by them in relation to this property, and they thereupon refused to purchase, either at the present time or in the future, any portion of this tract.

That is what Judge Swayne, in the record of the contempt proceedings, said on the 5th and 11th of November. Now, in the petition for a habeas corpus, page 329, Mr Davis says that on the 5th of November Charles Swayne refused to recuse himself, and went on to state from the bench, in open court, that a relative of his had purchased a part of said lands in litigation before him in said suit of Mrs. Florida McGuire; that the deeds had been sent north to him [the judge], and that he had returned them.

The fact that Davis says he was not counsel at that time would not prevent his hearing that statement, and he has never said that he did not hear it or that that part of that petition is untrue. If so, counsel, parties, the community, probably through the newspapers, but certainly everyone present in that court knew that the judge owned no interest in that land on the 5th day of November. Then the judge went on with the trial of criminal cases until the 9th of November, which was a Saturday. Then, instead of being ready for trial, the parties in this case were not ready and wanted it postponed for the term. The court refused in the exercise of a sound discretion. Remember they had notice on the 5th that he stated he was competent and had the right to try that case, and they had four days' notice to get their witnesses.

Thereupon, this contempt was committed. I think it was a misbehavior of officers of the court, but I do not rely upon that. Under the statute already read contempt proceedings will lie for the misbehavior of any person, not only in the presence of the court, but so near thereto as to obstruct the administration of justice; we do not care, therefore, whether they—Belden and Davis—were lawyers and officers of the court, bound by their positions as members of the bar (except that their knowledge of the law and their confidential position was an aggravation of the offense), or whether they had been other persons, the parties to the suit, or outsiders. In the face of the judge's denial that he was interested in that lot, without once inquiring as to the facts from Watson or Edgar, without investigating whether the lot had

been conveyed or not, they brought suit in the State court on that Saturday night against the judge as the owner of the land. That is not all. That suit was a sufficiently clear statement to the judge and to the community that he was a liar. It was a sufficiently clear statement that he was dishonest in attempting to try a case in which he was interested. It was a clear attempt to bring him into contempt in that community and to obstruct the administration of justice by making everybody distrust him——

Mr. GAINES of Tennessee. Will the gentlemen yield?

Mr. PARKER. Not now.

Mr. GAINES of Tennessee. It interests me very much along there and——

Mr. PARKER. Just stop a moment. I do refuse to answer for the moment, but I will answer the gentleman in a moment.

Mr. GAINES of Tennessee. Do not leave the subject before I get a chance to ask the question, because I really want to ask a question there.

Mr. PARKER. It is a sufficient thing of itself to obstruct the administration of justice to bring a public suit against him of that sort, informing that whole community that the lawyers who had brought that suit believed that the judge was interested in the case before him, had refused to leave the case, and had lied about it. But they did more. That very night the attorney himself, Paquet, put into the newspapers of that town the following article:

JUDGE SWAYNE SUMMONED AS PARTY TO THE SUIT IN CASE OF FLORIDA M'GUIRE V. PENSACOLA CO. ET AL.

A decided new move was made in the now celebrated case of Mrs. Florida McGuire, who is the owner by inheritance and claims the possession of what is known as the "Rivas tract," in the eastern portion of the city, near Bayou Texas, by the filing of a præcipe for summons, through her attorneys, ex-Attorney General Simeon Belden, Judge Louis P. Paquet, of New Orleans, and E. T. Davis, of this city, in the circuit court of Escambia County, in an ejectment proceeding for possession of block 91, as per map of T. C. Watson, which is part of the property which is claimed by Mrs. Florida McGuire, and which it is alleged that Judge Swayne purchased from a real estate agent in this city during the summer months, and which is a part of the property now in litigation before him.

The summons was placed in the hands of Sheriff Smith late last night for service.

Anyone who has common sense will say that it was the object of that statement to tell the community that that judge was not fit to sit upon the bench, because he wanted to try a case in which he was interested, and because he lied when he said he was not interested. Obstruction to the administration of justice is not merely coming and striking a judge with a hammer; it is not merely making a noise in the court room; it is not merely bribing witnesses or bribing jurors in a case; it is not merely that. During the term, when the community is looking to the judge for truthful statements of the facts and the law, if any person, worst of all if attorneys of his court, dare to charge him with dishonesty upon the bench in a pending case; dare to charge him with lying about the facts in that case; dare to emphasize and publish those charges by public suit, brought against him on a claim that they ought to have known and must have known was without foundation, and dare still more to prepare and publish an article calling public attention to that suit, and saying that it is alleged that the judge is interested in the suit pending before him, no court that respects itself

and its duties can for a moment fail to see that for the protection of the honor and dignity and good faith of that court, which must depend upon the trust of the community, it is necessary to punish these men.

No court that respected itself could afford to allow that contempt to pass unpunished, and imprisonment for 10 days and a fine of \$100 was a light punishment for that attack upon the honor and dignity of that court. This, too, has been already so determined, for the appeal in that case (120 Fed. Rep., in re Davis) set aside the sentence, not upon its merits, or upon the grounds set up in the petition, but upon the question of whether "fine and imprisonment" should be "fine or imprisonment." Those who have somehow gotten an idea that Judge Swayne is an unjust judge because he so protected his court have, in my opinion, unwittingly done him the greatest of wrong. In inflicting that punishment he did as righteous an act and as brave an act as was ever done by any judge.

Now is the time for the question of the gentleman from Tennessee [Mr. Gaines].

Mr. GAINES of Tennessee. All right. Now, I want my friend from New Jersey [Mr. Parker] to feel assured that I am perfectly sincere in this.

Mr. PARKER. I am ready now to hear you.

Mr. GAINES of Tennessee. I have listened to the gentleman from New Jersey [Mr. Parker] with a great deal of pleasure. Will the gentleman tell me when Judge Swayne informed those lawyers he did not have any interest in that property?

Mr. PARKER. On the 5th day of November.

Mr. GAINES of Tennessee. Where does the gentleman get his authority for that?

Mr. PARKER. It is in his statement, and it is found in Davis's affidavit, on page 129.

Mr. GAINES of Tennessee. Why did not Judge Swayne answer the letter, and why has not Judge Swayne furnished the letter that these gentlemen wrote to him? Why did he not answer it, and why did he not furnish it as part of the proof in this case?

Mr. PARKER. I will say to the gentleman from Tennessee that I tried to answer that question. I do not think it was necessary.

Mr. GAINES of Tennessee. The gentleman knows that the presumption is against him if he can not produce the letter? That is a good proposition of law?

Mr. PARKER. Not at all. I want to say to the gentleman that the judge received a notice from the lawyers—a letter, as I remember it, though I have not it before me—containing a statement which included no details, but simply said to him that he was interested in the Rivas tract which was in litigation before him, and they wanted him to recuse himself. There were several reasons why he might wait until he met them on the 5th of November.

Mr. GAINES of Tennessee. How long did he wait?

Mr. PARKER. From, say, the 17th of October to the 5th of November. He knew he was to be there. One reason might be that he thought those lawyers might have made a little inquiry before they made such a charge against him, for the least inquiry would have shown it was all wrong. If they had asked Mr. Edgar or Watson & Co. they would have found it was all wrong. No purchase had been consummated, although agreed upon. In the next place, he might



have been puzzled to know what they were referring to. He had bought—or his wife had—certain lands in Florida by warranty deed. The agents had tried to make them take a quitclaim deed for another tract of land, and said that the quitclaim would be just as good as a warranty deed. He had taken other lands, and it might be that he wanted to go down to Florida and see the agents and see if he could deny that he was interested.

He did not perhaps remember the exact terms of the letters. He himself, when he came to make a statement in November, made an immaterial mistake. He said the deed had been sent to him and that he had returned it. That was untrue. The deed had been sent to the agent, and he ordered it returned. And he might have been doubtful whether that agent had performed the duty which he had imposed when he told him to return it. He might have been looking for light. There are 50 reasons. It might have been sheer carelessness, and even Congressmen are sometimes guilty of carelessness in answering a letter. A judge has many letters to answer. But I do not see how 20 days made any difference if he did go there. He then found out what they meant. When they said he owned lot 91 he denied it, and explained it, and the case was set on the 5th for the 11th. And then they took revenge by bringing the suit and publishing a statement in the newspaper about him.

Mr. GAINES of Tennessee. How do you answer this allegation that he did not buy this property in litigation?

Mr. PARKER. The fact is given in the record.

Mr. GAINES of Tennessee. Give me the page of it.

Mr. PARKER. I have given it to you. You will find it on page 582 of the testimony.

Mr. SMITH of Kentucky. Mr. Davis it is not asserted was present. In the article filed by Mr. Blount it is not asserted that Mr. Davis was in court and heard the statement. He says Belden and Paquet were there; and I understand that is a mistake, in saying that Belden was there, as he was not there, but was sick.

A MEMBER. Nobody but Paquet was there?

Mr. PARKER. How many people am I answering?

Mr. SMITH of Kentucky. You are answering a certain proposition; it does not make any difference how many people you are answering.

Mr. GAINES of Tennessee. Did not these lawyers have the right to file this suit? Did not these men have the right to file this suit against this judge, even if he was a judge?

Mr. PARKER. Will you kindly stop putting more questions until I get through with those already asked? The first question was whether Davis knew what the judge said. Davis filed a petition, which is already referred to, and which is found on page 329, which shows that he knew what the judge said. He states that the judge said that he returned the deed.

I desire to say, as to the matter of knowledge, there is no difficulty about the knowledge of these attorneys. Belden was one of the attorneys and Paquet was present all the while. Davis was consulted before the suit was brought and before the newspaper publication was indulged in, and he knew what were the facts. He never denied knowledge of the facts, and he signed the petition in the habeas corpus, in which he said directly that the judge had made this statement in

court, and so did Belden in filing a like petition. Will anybody tell me, after they have made that statement in their petitions, that they did not know that the judge had made that statement that he was not interested in that land?

Now, I answer the other question of the gentleman, as to whether people have a right to bring a suit against a judge——

Mr. GAINES of Tennessee. Do you think a Federal judge is better than a plain man in his right to be brought into court and made to disclose whether or not he owns a particular piece of property? Is a Federal judge better than you are, or than I am? That is the question I want to ask you.

Mr. PARKER. The gentleman first asked me whether it was any contempt to bring a suit against a judge. He then asked me a second question as to whether a judge is any better than a private man. I will answer that a judge is no better than a private man, but in his official transactions he represents the majesty of the law, and his person and his actions must be treated as sacred so far as necessary to maintain the administration of justice, and anything which interferes with or obstructs that administration of justice is not a contempt of the judge, but a contempt of the court and a contempt of the law, which is better than any private man. [Applause.]

In the next place, to bring a suit against a judge is nothing. To bring a suit which states that he is the owner of property which he has denied owning, and which is not only a public record, but is emphasized by a contemporaneous publication in a newspaper which forms part of the same transaction, and charges that that judge is corrupt enough to try and hear a case in which he is interested and cowardly enough, or worse, to deny such interest—I say that suit against a judge is a contempt of the court which the court must punish in justice to itself.

Now, the gentleman from Alabama [Mr. Richardson] desired to ask me a question.

Mr. RICHARDSON of Alabama. I would be glad to ask a question for information. The gentleman has discussed, with marked courtesy, all the matter relating to block 91. I should be glad to call his attention most politely and respectfully to this paragraph in the testimony, which possibly he has overlooked:

The relative I referred to yesterday or the day before was my wife.

He went on to say that his wife had paid for the property from funds from the estate of her father in Delaware.

Mr. COCKRAN, of New York. On what page of the record is that?

Mr. RICHARDSON, of Alabama. Page 116. I just call the attention of the gentleman from New Jersey to that, because he has been so kind——

Mr. PARKER. The judge never said that they had bought and paid for the lot.

Mr. RICHARDSON, of Alabama. That is in the record.

Mr. PARKER. No; it does not relate to that. I will go over it and explain it to the gentleman later with great pleasure.

Mr. RICHARDSON, of Alabama. Don't you think that the highest degree of propriety and regard for judicial dignity would have led him to rescue himself from that trial?

Mr. PARKER. Oh, it would have been better for him not to have done as he did, if that was so. It was not so.

Mr. Speaker, there is but one other matter charged, and that is one that has given me the greatest concern. At the very end of this case it was proved, to my great astonishment, that the statutes of the United States only allowed actual expenses, not to exceed \$10 a day, to judges traveling outside of their districts. I have been at the bar for many years. I have heard it remarked over and over again that judges were glad to go to other districts, because they got \$10 a day for it. I supposed it was like our 20 cents a mile; that they got \$10 as an allowance for that work. I always supposed so. I know the sentiment of the bar was that that was so, and I was very much astonished to find, when I came to read the statute, that it was not so.

The statute is not easy to find. Gentlemen will look for it in vain in the Revised Statutes or in the supplements thereto. It is contained in a sundry civil appropriation bill of 1896. Extracts were made from that act in the second supplement of the revision, but this particular section was never so extracted. It took me some time to find that particular section which provided for the payment of judges serving outside of their circuits of their reasonable expenses for travel and attendance not to exceed \$10 a day, to be paid to them by the marshal upon their certificate. (See Appendix B, Law as to Expenses.)

I was not present at the taking of the testimony. During the evidence it was offered to be proved on Judge Swayne's behalf that it had been the custom of various courts to certify \$10 as a lump sum. That offer was refused, and I am inclined to think it was properly refused. But I am inclined to think that Judge Swayne would have had a right to testify in his own behalf to prove that he knew that this was done.

His knowledge was of importance because it might bear on the question of intention, but that it was done by other people by itself was of no importance. His knowledge of such an accepted practice was of importance. I understand that his counsel now say that they accepted the exclusion of that evidence and would have asked Judge Swayne about this matter if they had not supposed the committee would not allow him to go into it at all. I think the subcommittee would have allowed him. Unanswered, unexplained, the fact that he took \$10 a day when he had spent less is a thing that is hard to deal with.

Half a dozen of us made a report in this matter. It was carefully drawn, not by myself—I have not the honor to draw that sentence with reference to that matter—it was carefully drawn, and the sentence was afterwards repeated in the speech of the gentleman from Maine [Mr. Littlefield] when he spoke on the question of impeachment. He said that unanswered and unexplained, this constitutes an impeachable offense.

Mr. Speaker, I blame myself that I did not add, as I had intended in the beginning, that the statement that this was an impeachable offense did not mean that he was necessarily to be impeached. There are many indictable offenses for which a grand jury will not indict. If a practice has prevailed for years among the best citizens of the community, even if it be a breach of the law, grand juries bring in in some States what is called a "general presentment." We have known the the grand jury to present, for instance, that people are too careless in regard to the child-labor law or that there are too many saloons

open or whatever it may be that becomes a public nuisance, whereas they decline to indict until they give a notice to stop by their presentment. If a custom of this sort has been adopted as a practical construction that "reasonable expenses not to exceed \$10 a day" meant a reasonable allowance for travel and attendance, or if the certificates were signed on the marshal's presenting a certificate as the well-settled practice and without looking at the law, or if it was done for any honest motive, no Congress would impeach.

I wanted to say that then in my report, but I thought it was better said on the floor on the motion for impeachment. Mr. Speaker, I can not get over the fact that when a member of the committee who had signed a minority report asked for leave on this floor to speak and that the previous question should not be put, he was refused, and the previous question was put, and that I was unable to inform the House of my views at that time on that subject.

Mr. PALMER. I want to state here that I asked the gentleman from New Jersey if he wanted to speak, and he said he didn't know. I had no idea that he wanted to speak at that time.

Mr. PARKER. I rose to speak.

Mr. PALMER. I beg the gentleman's pardon; he rose to make a point of order that the previous question was not in order. If the gentleman is criticizing me for not allowing him to speak, he is under a misapprehension.

Mr. PARKER. I do not criticize anyone. I say, however, whether it was unwittingly done or not, in a case that involved the honor and the judicial life of a judge of the Federal court, I ought to have been allowed to speak.

Mr. JENKINS. Inasmuch as it was largely due to the influence of the gentleman from New Jersey that I joined him in favor of impeachment, I want to ask him if he had any evidence before him, or if there was any evidence taken before the committee, that any judge in the United States other than Judge Swayne had ever paid out only a dollar and a quarter a day and then put in a bill for \$10?

Mr. PARKER. I can not answer the gentleman's question.

Mr. JENKINS. Does not the gentleman know that there never has been a particle of evidence submitted before the committee as to the conduct of any other judge in the United States in that particular?

Mr. PARKER. That is true; it was ruled out.

Mr. JENKINS. It was not; it was never offered.

Mr. PARKER. I beg the gentleman's pardon.

Mr. JENKINS. I beg the gentleman's pardon—and any gentleman who will look at the record can determine that question.

Mr. PARKER. I understood so.

Mr. JENKINS. The gentleman says he understood so; but assuming that that was true, is it any defense for Judge Swayne that 10 other judges in the United States have deliberately stolen \$6,000 out of the Treasury of the United States and put it into their pockets? That is what I want the gentleman to answer, and I want to ask him if I did not join him in recommending that Judge Swayne be impeached?

Mr. PARKER. I did not recommend that he be impeached. I said that it was an impeachable offense. [Laughter.] Now, I say that is a very different thing, a very different thing. I can say of many a man that "unanswered and unexplained" his act was indictable, but I believe it has been said that if everything that was against the law

was punished there would not be any man out of State prison. There are excuses for everyone.

I intended to take the floor then and state this. I still think that to take that money on a certificate knowingly and willfully, as charged in these articles, is impeachable. If it is done not knowingly and willfully, but with the belief that the question has been settled and made a practical ruling of the courts, this does not justify the act in law, but it might induce us to hesitate in acting on that alone.

Mr. JENKINS. Mr. Speaker, I will ask the gentleman if any judge has admitted to him that he has ever perpetrated any such crime on the United States?

Mr. PARKER. To me? No. To others, yes.

Mr. JENKINS. Has the gentleman any knowledge that any other judge in the United States has committed that crime?

Mr. PARKER. Yes; a letter appeared—a certain letter which I showed the gentleman in confidence.

Mr. JENKINS. Yes; and no disclosure was made that would justify the gentleman's statement on the floor of this House, if he wants me to refer to a confidential letter.

Mr. PARKER. Then why does the gentleman ask me questions?

Mr. JENKINS. Because I supposed he would answer them and give us some light on the question.

Mr. PARKER. How could I answer the question?

Mr. JENKINS. If the gentleman does not want to, he does not have to.

Mr. PARKER. Mr. Speaker, there has come out since the investigation a document which I think is of importance. I do not rely at all upon ordinary newspaper reports. But this was a copy of a letter written by Mr. Shaw, Secretary of the Treasury, or by some one in his office in authority, and published by his authority at first in the Washington Post and afterwards in other papers. It gave five circuits. That letter has probably come into the hands of every gentleman. It does not show that any judge ever spent any less than he certified. In that I answer the gentleman frankly. It does show that in one circuit there were seven judges who always certified \$10 a day, covering a large number of days. It showed that in another circuit there were nine judges, of whom eight, I think, always certified \$10 a day. In other circuits the practice varied. I came to the conclusion that there was a difference of practice in the various circuits.

Mr. FITZGERALD. Is there any evidence that these men who certified an expenditure of \$10 a day had in fact expended less than that amount?

Mr. PARKER. There is not the slightest evidence of that fact.

Mr. PALMER. Then what does all that amount to?

Mr. FITZGERALD. Then is the gentleman assuming that, because a number of judges certified that they had expended \$10 a day, the mere fact that they coincided in amounts is evidence that they had not expended the amount certified? Is that the gentleman's inference from these facts?

Mr. PARKER. I do not infer.

Mr. FITZGERALD. Is that the inference he wishes the Members of the House to draw?



Mr. PARKER. I do not infer. I wish them to draw no inferences. I will state I doubt—I will state that the offer was made in the testimony to prove that it was the practice of other judges. That offer was made when the matter was first brought out in the testimony.

Mr. PALMER. It was not made. The offer was on the cross-examination of a witness.

Mr. CLAYTON. Judge Swayne, in the hearing before the subcommittee, either he or his counsel——

Mr. PARKER. His counsel.

Mr. CLAYTON. Did seek to show that other judges had charged \$10 a day under the head of expenses; but as to the question that the gentleman from New York [Mr. Fitzgerald] asked, if Judge Swayne or his counsel on that hearing undertook to show that any judge had charged \$10 a day and had expended only \$1.25, there was no such offer made.

Mr. PARKER. Well, I shall refer to the record. I do not want to detain the House any longer now.

Mr. CLAYTON. If the gentleman will permit me—I have not interrupted him—here is some language that I want to call attention to:

Evidence as to the alleged practice of other judges in this respect was offered and excluded, and we think properly. It would have been competent for him, when a witness in his own behalf, to have stated why he made those certificates. As a witness, he answered and explained every other charge. This charge he made no effort, as a witness, to answer or explain. The inference from the record, on general principles, is that the charge is admitted to be true, and that he has no answer or explanation thereto. Whether a satisfactory explanation can be made we do not say. We must take the record as it stands.

Upon this record, unanswered and unexplained, we are of the opinion that in this particular an impeachable offense has been made out.

RICHARD WAYNE PARKER  
(And others).

Mr. PARKER. Of course, I signed it.

I have already stated that, unanswered and unexplained, an impeachable offense has been made out. But if the statute has been otherwise construed, it is a matter for this House, under its conscience, to determine not merely whether the matter is impeachable, but whether under the circumstances it demands impeachment. That is the question before this House. It is a question of conscience with every man. I had proposed to state this on the motion for impeachment. I had not bound myself to vote for impeachment by saying that, unanswered and unexplained, that action was impeachable.

Mr. LACEY. Mr. Speaker, I will state to the gentleman in this connection I find the reference that is called for on page 433.

This is the point of the judge being denied the privilege of explaining this and then being called to the bar of the House because he did not explain it. They asked this question of Mr. Bradley:

Q. The accounts of all the judges pass through your division of the United States Treasury Department?—A. Yes, sir.

Q. And as chief of that division you have supervision, and it is your duty to inspect all of them?—A. Yes, sir.

Q. I observe here that the charge as certified by Judge Swayne for any particular number of days seems to be at the rate of \$10 a day.—A. Yes, sir.

Q. Is that usual?

Mr. PALMER. I do not think that is of any consequence. You need not answer that question.

Mr. PALMER. Go on.

Mr. LACEY. "We are not trying any judge except Judge Swayne." The fact of the matter that other judges put a construction upon this law that it was a flat fixed rate of \$10 a day is not permitted to be proven by the accounting officer who audits the accounts.

Mr. PALMER. Mr. Speaker, the Judiciary Committee unanimously, including Mr. Parker, stated that ruling was right, and so would any other lawyer.

Mr. LACEY. Why did you refuse the judge an opportunity to explain that when he offered to show that that was the construction put upon the law by other judges?

Mr. PALMER. It was up to the judge after that to make a distinct and specific offer to prove a distinct and specific fact. If he had any specific fact to prove it and offered it in a legitimate and proper way, it would have been received.

Mr. CLAYTON. What he offered was to the effect that if he was guilty of this wrong he said he justified it on the ground that others had been guilty.

Mr. JENKINS. Will the gentleman permit me to ask the gentleman from Iowa a question in this connection?

Mr. PARKER. I want to get through to-night.

Mr. JENKINS. You will have all the time you want. I ask the gentleman from Iowa if he was not reading from the testimony of a witness other than Judge Swayne?

Mr. LACEY. Certainly.

Mr. JENKINS. Did they ask that witness to prove whether or not any other judge had taken money in excess of what he was entitled to?

Mr. LACEY. No; they asked this proposition. Here is the offer by Senator Higgins:

Mr. HIGGINS. The point that I make, if the committee pleases, is that the action of the several and respective judges of the courts of the United States are practically a judicial interpretation of the statute—as to what it means—and that if the judges are informed to furnish the certificates at the rate of \$10 a day it is their interpretation of its being proper and right under the statute.

Mr. JENKINS. How could that witness testify as to the understanding of all the judges of the United States?

Mr. LACEY. He was asked as to whether it was usual that bills were put in at this fixed rate, and he was denied the privilege of answering it, and the committee, I think, made a mistake; and yet they come into this House and reflect upon the judge because he did not testify to what they would not allow a disinterested witness to testify to under oath.

Mr. JENKINS. But the judge was not on the stand, but subsequently he was given an opportunity to explain or deny, and he never offered or attempted to explain or deny.

Mr. LACEY. He was not asked the question. This witness was told by the chairman, "You need not answer that question. We are not trying any other judge except Judge Swayne."

Mr. FITZGERALD. Mr. Speaker——

Mr. PARKER. Mr. Speaker, have I the floor?

Mr. FITZGERALD. Does the gentleman say——

Mr. PARKER. I would like the floor.

The SPEAKER pro tempore. The gentleman from New Jersey declines to yield, and gentlemen will be seated.

Mr. JENKINS. I would like to ask the gentleman from New Jersey [Mr. Parker] a question.

Mr. PARKER. Of course, I will have to yield to the chairman of the Committee on the Judiciary.

Mr. JENKINS. Mr. Speaker, I want to ask a question of the gentleman from Iowa [Mr. Lacey].

Mr. PARKER. I would say to the gentleman from Wisconsin [Mr. Jenkins] that I would rather not get into any more discussions on that. But he may go ahead if he so desires.

Mr. JENKINS. I want to ask the gentleman from Iowa [Mr. Lacey] if it is a defense for Judge Swayne that 10 other judges in the United States have committed the same crime?

Mr. LACEY. The answer is very simple.

Mr. JENKINS. In other words, is it a crime for a man to steal from the United States?

Mr. LACEY. The proposition came up in this way, and I am informed by the members of the Committee on Appropriations that they were asked to amend the law which required the judges to give an itemized account of the expenses of a judge who was outside of his circuit, and it was recommended to modify the law so that a fixed sum would have to be allowed in each case.

Mr. PALMER. But they did not do it?

Mr. LACEY. They attempted to do that. Appropriations were made from year to year and in every appropriation the same identical language was used as in the amendment to this law; it was done from year to year by nearly—I will not say nearly all—but, as shown by the Secretary of the Treasury, at least a majority of the judges construed the law to give them a fixed rate of \$10 a day; just as the law gives a fixed rate of 20 cents a mile to my friend from Wisconsin [Mr. Jenkins] when he comes from Wisconsin here, when the actual traveling expenses are not that much; just as it allows \$4 to a man who is traveling as an Indian inspector, whether he spends it or not; and as it allows \$3 a day to a pension examiner whether he spends it or not. That same construction was put on it by the judges.

Mr. JENKINS. By what judges?

Mr. LACEY. Practically all the judges in the circuit in which these gentlemen live.

Mr. JENKINS. Because we have a letter from a judge you were mistaken when you made that statement on the floor of the House here recently.

Mr. LACEY. We have now the information from the Secretary of the Treasury which shows that in a considerable majority of the cases the judges put the construction upon it of a fixed rate of \$10.

Mr. JENKINS. Did Judge Swayne either tell the gentleman or the committee that he put that construction upon it?

Mr. PARKER. I think this is going beyond the question. I desire the floor.

Mr. PALMER. I would like to ask the gentleman a question.

Mr. PARKER. I decline to yield further. This publication by the Secretary of the Treasury, covering the year 1903, showed a great variety of circuits. In one circuit of seven judges none of them took \$10 a day as a regular thing; in another eight always took \$10 a day and one did not, and it went to 670 days for the eight. In another of seven judges all of them always took \$10 a day, amounting to

366 days. In other circuits there was a variation. We can only say that in some circuits so much uniformity in the certifying of \$10 seems to indicate an honest judicial construction, or practical construction of the statute. Of course it is no legal justification for any man to break the law on the ground that it is misconstrued, but it is sometimes an excuse. Want of intent to break the law is no defense in the trial or justification before the jury, but it will be a justification for suspension of sentence or a very small penalty.

In this case the penalty can not be reduced or sentence suspended. Conviction means the greatest penalty that can be inflicted upon a man. It is worse than death for a judge to be removed from office and disqualified. The House has a wide discretion in this matter. It may prosecute or not, as it will. Each man's conscience must decide whether, upon this one single question of the certificates of expenses, he feels himself bound to vote for the impeachment of Judge Swayne.

Mr. SHERLEY. Will the gentleman answer me one question? I want to ask you if anywhere at any time Judge Swayne offered, as an excuse for his drawing \$10, that he had construed the law to entitle him to \$10?

Mr. PARKER. Are you speaking from the record or not?

Mr. SHERLEY. Yes, sir; from the record.

Mr. PARKER. I do not know of any such thing in the record.

Mr. CHARLES B. LANDIS. Did he not offer to prove it?

Mr. PARKER. He offered to prove it.

Mr. SHERLEY. That it was his construction.

Mr. PARKER. He offered to prove it was other people's construction.

Mr. SHERLEY. Then this further——

Mr. PARKER. Will you let me complete my answer? Gentlemen are so eager in this matter that they will not allow a man to answer. There is no proof of this in the record. There is an offer to prove that \$10 a day was pretty generally certified, and I take it that he meant to follow that up with proof that it is generally certified in some circuits without reference to the exact amount spent.

I know that his counsel since then has complained a little that the ruling out of the testimony in that regard made him think that Judge Swayne would not be allowed to testify on that subject, and therefore he did not offer it when he got Judge Swayne on the stand. I think I have fairly answered your question.

Mr. SHERLEY. Just one further question in this same connection. Do you believe, as a lawyer—do you believe that anyone contends—that any committee would hold incompetent testimony by a witness situated as Judge Swayne, not as to what construction others placed on a statute, but that he himself construed it in a given way?

Mr. PARKER. I only know what his counsel says.

Mr. WILLIAMS of Mississippi. Will the gentleman allow me to ask him a question?

Mr. PARKER. I yield to the gentleman from Mississippi.

Mr. WILLIAMS of Mississippi. Is it as a matter of fact true and does not the gentleman know that in the majority of the judicial districts of the United States it actually does cost the judges more than \$10 a day, and therefore it is perfectly natural and proper they should certify to it, at least \$10; and is not the gravamen of the

charge here, not that he certified the amount at all, but that while certifying to \$10 he actually spent less?

Mr. PARKER. I do not know how to answer that question. I do not claim to have knowledge of the expense of living throughout the United States. I do not know what your hotels charge, and I can not answer. The gravamen of the charge, of course, is, I take it, where the judge did not spend it.

Mr. WILLIAMS of Mississippi. These other men spend it.

Mr. PARKER. That may be true.

Mr. WILLIAMS of Mississippi. I think the other men did spend it. If you take the names, you will find that they were in the city districts.

Mr. PARKER. I have not the names. I think there are 19 judges of the different circuits mentioned in the Treasury Department letter who certify \$10 uniformly and 17 who do not.

Mr. LIVINGSTON. I would like to correct a mistake which has just been made on the floor by the gentleman from Iowa [Mr. Lacey.]

Mr. PARKER. I am done, unless there are further questions.

#### APPENDIX A.

##### ABANDONED CHARGES.

The Hoskins bankruptcy, involving, as is claimed, \$40,000 assets, was continued only because the bankrupt would not give a moderate bond of \$5,000, and he used the opportunity to settle at a discount.

The Hoskins contempt went from term to term, not by order, but by agreement of attorneys, and young Hoskins killed himself in the depression caused by a prolonged spree.

Tunison, the alleged favorite of Judge Swayne, lost most of his cases before him. Naturally these charges fell.

#### APPENDIX B.

##### THE LAW AS TO EXPENSES.

The law of 1896 (29 U. S. Stat., p. 451) appropriates in a sundry civil bill for payment "of reasonable expenses of travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such items shall be allowed the marshal in the settlement of his accounts with the United States."

Those of the judges who certify \$10 obviously construe the word "expense" to include any loss or damage, as in the phrases "at the expense of health," "a joke at another's expense." Attendance out of the district, away from his home and office, is a loss and, in this sense, an expense to any judge in interfering with his management of family affairs and private business, and they seem to think this construction justified as a fair construction of the law.

The history of the legislation is as follows:

In 1850 (9 Stat., 442) judges could be detailed in case of sickness and disability, and the judge shall be allowed his reasonable expenses of travel to and from and of residence in such other district necessarily incurred by reason of such designation and appointment, and such expense shall, when certified by the clerk and district attorney of the judicial district within which such services shall have been performed, be paid by the marshal of such district and allowed him in his accounts with the United States.

In 1871 new salaries were provided for all judges (16 Stat. L., p. 495) and all travel abolished for judges, including the provision "it shall be the duty of such district judge as shall be for that purpose designated and appointed to hold the district or circuit court, as aforesaid, without any other compensation than his regular salary as established by law."

These provisions go into Revised Statutes with a special provision as to New York City for payment on a judge's certificate. By Revised Statutes, pages 596-597, the circuit judge could order the district judge to help in another district in the same circuit "without any other compensation than his regular salary, as established by law, except in the case provided in the next section," which provided that when this court



was held in the southern district of New York "his expenses, not exceeding \$10 per day, certified by him, shall be paid by the marshal of said district as part of the expenses of the court, and shall be allowed in the marshal's account."

In 1881 the payment for expenses was resumed (21 Stat. L., p. 454). "For expenses and fees of bailiffs, for payment of expenses of district judges who may be sent out of their districts in pursuance of law to hold a circuit or a district court, and for other miscellaneous expenses, \* \* \* and so much of section 596 of the Revised Statutes as forbids the payment of expenses of district judges while holding court outside of their districts is hereby repealed." Under this act judges were paid upon itemized statements. (See Record, p. 432, letter of E. G. Timme, auditor.)

In 1891, March 3, section 8 (Supp. Rev. Stat., p. 904), a judge attending the circuit court of appeals "shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held his reasonable expenses for travel and attendance not to exceed \$10 a day, and such payment shall be allowed the marshal in the settlement of his accounts with the United States."

Thus, at appeal, a judge was paid on his simple certificate, and on other detail he had to file an itemized certificate.

In 1896 (29 Stat. L., p. 451), the sundry civil bill provided for payment, on certificate, "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in settlement of his accounts with the United States."

Since that time the payment has been made without itemized accounts (Rec., p. 432, auditor's letter) of small payments made and incident to such travel and attendance. It is claimed that Judge Swayne rendered bills at the rate of \$10 a day without reference to what he actually spent. It is proved that his board and travel of some of these visits did not amount to that sum. I am frank to say that the statute, in my opinion, is confined to expenses in the sense of money paid out, and does not extend to such expense as is involved in interference with other matters. But I am likewise bound to notice that it is claimed that some of the judges have been of the opinion that, including such interference, their expenses on attendance out of their districts would always be fairly above \$10, and that numerous certificates have been so rendered. While ignorance of the law excuses no one, intent is a necessary part of the high crime or misdemeanor which must be subject of impeachment, and if there be any such practice by respected judges it may be held to be a proof that they and this judge had honest intent. I believe that this practice is not warranted by law. But if such quasi judicial constructions have been given to the statute, in the absence of objection by the officers of the Treasury or of public discussion which would have called judicial attention to the matter, I must agree that impeachment proceedings against any one judge should now be found upon this single ground. Members of the committee differ on this question, which must be determined by the House.

The SPEAKER. The House will be in order.

Mr. LIVINGSTON. I have permission of the gentleman——

Mr. PALMER. I yield to the gentleman from Georgia, for the purpose of making an explanation.

The SPEAKER. Has the gentleman from New Jersey yielded the floor?

Mr. PARKER. I have yielded the floor.

Mr. LIVINGSTON. I understood the gentleman from Iowa to say a moment ago that the Committee on Appropriations from 1896, when it originated, had regularly incorporated this same language in the bill. This language was put in the bill in 1896:

Reasonable expenses, not to exceed \$10 a day.

Mr. LACEY. Reasonable expenses and attendance; those are the words, "and attendance."

Mr. LIVINGSTON. The point I want to make, Mr. Speaker, is this: That he charges, if I understand him correctly, that the Committee on Appropriations knowingly continued that language in the appropriation bill when the judges were violating the law.

Mr. LACEY. Oh, no.

Mr. LIVINGSTON. In other words, that they were charging \$10 a day when their expenses were less. Now, if there was a single member of the Committee on Appropriations, Mr. Speaker, including yourself, that knew any such thing, I am not aware of it; and the gentleman is mistaken when he makes such a statement.

Mr. LACEY. I say the Appropriations Committee knew the construction put on it by the judges.

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HOUSE OF REPRESENTATIVES, *Monday, January 16, 1905.*

[Congressional Record, volume 39, part 1, pages 925 to 949, January 16, 1905.]

ARTICLES OF IMPEACHMENT DEBATED IN HOUSE.

The SPEAKER. The gentleman from Pennsylvania is recognized.

Mr. PALMER. I yield such time as he may desire to the gentleman from Alabama [Mr. Clayton].

Mr. CLAYTON. Mr. Speaker, it is creditable to both the Federal judiciary and to the people of our country that the power to impeach United States judges has been so infrequently invoked. It has been well-nigh 40 years since such an officer—Judge Humphreys, of Tennessee—was impeached. The record in the pending case will show that the people of Florida and elsewhere who have had business with Judge Swayne have suffered long and patiently, and it is to their credit. They have suffered long and patiently because of the reverential respect on the part of the people there, as elsewhere throughout the Union, for the judiciary. They have thus endured, furthermore, because they knew the process of impeachment to be long, tedious, and doubtful. But, Mr. Speaker, the people of Florida during the present Congress have paid to the party in power here and in every department of government the highest compliment. In bringing their memorial and this complaint here they have impliedly said to the Congress that they believed no partisan feeling will control the deliberations of this House or the Senate, and that the issue joined between the people and this judge will be fairly and correctly tried. Speaking for myself, knowing the patriotism and the honesty that actuate the membership of this House, I can not doubt that the result here of the pending resolution will be in accordance with the facts as presented and the law and justice in the case. I say this, Mr. Speaker, without regard to what the outcome may be, for whatever conclusion may be reached here, I trust, sir, that it shall not lessen my respect for this House nor my confidence in the correctness of its judgment.

I propose, Mr. Speaker, after these observations, to speak to the case. On the 13th day of December last I had the honor to address this House in this case on its general and preliminary phases. During that discussion I took occasion to read the statute fixing the traveling and attendant expenses of the Federal judges; but with your kind indulgence, I shall again recite this provision of law. The act of June 11, 1896, provides—

For reasonable expenses for travel and attendance of district judges directed to hold court out of their district, not to exceed ten dollars per day each.

Specifications 1, 2, and 3 of the articles here charge Judge Swayne with having rendered a false claim and certificate for more money than he expended for travel and attendance. It is not my purpose to make at this time any elaborate argument on this specification.

Let me say, however, at the present time that the statute is plain and mandatory, that it is a statute fixing expenses and allowances, and that the well-established rule of law is that such statutes as this are to be construed strictly, and that they are never to be construed equitably, if you please. Now, I have heretofore referred to the authorities in support of that proposition, and I have not heard in the course of this debate anyone to dispute the soundness of the cardinal rule of strict construction which obtains in case of a statute providing for payment of the expenses of a public officer. The testimony—and I shall not read it—shows that Judge Swayne in some cases was guilty of drawing \$10 a days for alleged expenses, when the testimony shows that he paid out only \$1.25 a day for his board; and further, that his expenses for travel and going to and from that court where he spent only \$1.25 a day for board did not exceed \$50. It is unnecessary for me to recite in detail the evidence relating to such expenses. That has been done in this debate and the record is here and all who desire to look at the figures can do so in a few moments.

The statute has been violated. The proof has been made and the fact has been admitted by the respondent's champions in this discussion. But excuse has been offered, and that, too, in this case of a judge who is supposed to be an exemplar, who ought to hold up the standard of observance of the law so high that all men might rightly imitate his conduct. And yet there are suggestions made now which were not made at the hearings of this case when the testimony on both sides was adduced. Improper matters have been thrust into this case during this debate, matters that have not come through the regular and legitimate channels, suggestions and hearsay evidence, newspaper stories, and immaterial facts, all thought by Judge Swayne's friends to be exculpatory. In regard to the charge contained in articles 1, 2, and 3, Judge Swayne offered no excuse and no explanation in his two statements made before your committee. Indeed, in his last statement, when this charge was under investigation, he said not a word in reference to it, and we find that even in the printed views of the minority members of the Committee on the Judiciary, including those who have spoken against impeachment, these gentlemen have said, all have said, that the subcommittee and the whole committee were correct in holding that what other judges may have done in like cases was not and is not pertinent. These minority members went further and held that Judge Swayne by his silence, by his refusal to offer any exculpatory explanation, stood convicted, and upon that ground joined in with all the members of such committee and recommended impeachment to this House.

I do not know what has come over the spirit of the dreams of some of these gentlemen, nor do I care. It is no concern of mine what may actuate any gentleman here. As long as his conduct is satisfactory to his own conscience, I have nothing to do with it. But I recite these facts to show that some sort of a strange evolution or revolution has taken place in some minds, and endeavor is now made to excuse a judge in high position from a plain violation of the law, a violation so plain that even his friends here at one time, before they became warmed up with the zeal of advocates, admitted that he stood guilty.

Let me refer to another matter involving at least a grave impropriety. This circular, of which I have a copy here, headed "Swayne not alone," has been handed around here. It is not a part

of the evidence. It was never put before this House in any regular or legitimate way.

Mr. CHARLES B. LANDIS. The committee would not permit it to be presented, would they?

Mr. CLAYTON. This was not offered to the committee.

Mr. CHARLES B. LANDIS. Is not that what Judge Swayne was going to offer?

Mr. CLAYTON. Judge Swayne did offer, through his counsel, to show that other judges had charged \$10 per day for expenses. The gentleman from Pennsylvania [Mr. Palmer], chairman of the subcommittee, ruled that what other judges may or may not have done was not pertinent to the issue in the case; that Swayne was on trial, and that it would be time enough to try other judges when articles of impeachment were presented against them. The Judiciary Committee, the majority and minority, all agreed that the ruling of the gentleman from Pennsylvania [Mr. Palmer] and the subcommittee on that subject was correct, and that such testimony could not be brought in here. It was not brought before the committee nor into the case until after this debate was begun. If it was not proper to bring it before the committee in the regular way, it can not be proper to bring it in here now in this irregular way.

Mr. CHARLES B. LANDIS. I was just going to suggest this: That if the committee would not permit him to show that it was the custom of Federal judges to charge up their expenses at the maximum rate, a failure to do that should not be commented upon by the gentleman from Alabama.

Mr. CLAYTON. The gentleman ought to be lawyer enough to know——

Mr. CHARLES B. LANDIS. I am no lawyer.

Mr. CLAYTON. Well, permit me to say sincerely that the profession missed the acquisition of an ornamental member.

Mr. CHARLES B. LANDIS. I grant that if to be a lawyer——

Mr. CLAYTON. Now, Mr. Speaker, I beg the gentleman's pardon. I have given this explanation. If the gentleman thinks proper to take a view different from mine, he is at liberty to do so. I believe any impartial lawyer would assent to the proposition that the ruling of the committee was correct. It has no place in this case, but that is my opinion, and the gentleman can entertain his own view. If he wants to try this case on something that is not properly before the House, some hearsay testimony, some rumor, some document that never was investigated by the committee, the gentleman is certainly at liberty to do it, and I make no complaint; but I say that I appointed a committee to take the testimony in this case upon the assumption that we would try it here upon the testimony taken by the committee, and this committee brought that testimony here. The rulings of the committee bringing in testimony and excluding testimony were approved by the Committee on the Judiciary. The matter has been under investigation repeatedly by the House, and no complaint of any dereliction on the part of the committee was ever made until this time. That is my position.

Mr. CHARLES B. LANDIS. I want to make one further suggestion and that is, that in view of the fact that the committee would not permit him to show that it was the custom of other judges, it is not fair to Judge Swayne to take him to task for not making that show

Mr. CLAYTON. No; for the reasons just stated by me. After several debates and after several hearings when the testimony was printed and considered there was no suggestion of that sort made. The gentleman misapprehends my statement. But let me proceed.

Mr. SHERLEY. I would like to ask the gentleman a question.

Mr. CLAYTON. Yes.

Mr. SHERLEY. Did Judge Swayne ever offer to testify that his construction of the law entitled him to take the \$10 a day?

Mr. CLAYTON. No; Judge Swayne never did offer to testify to that. He made no offer to testify himself in regard to this. The question arose when his counsel was cross-examining the witness Bradley. It arose in that connection before Judge Swayne last testified in his own behalf, and he never offered to make any explanation and never referred to the subject.

Now, Mr. Speaker, the House seemed to have been at one time unanimously of the opinion that Judge Swayne should be impeached upon this ground. All its Members seemed to have concurred in that conclusion at one time, though it is fair to state that during the colloquy, which occurred between the gentleman from California [Mr. Gillett] and the gentleman from Illinois [Mr. Mann] in December, it did not appear clearly how the gentleman from California, a member of the committee, stood on that proposition. He can answer for himself when his time comes.

Mr. Speaker, I do not desire to dwell further upon this except to say that I repudiate the charge or insinuation that other judges have been guilty of offending like Judge Swayne has. I do not believe that the judges of this country have been in the habit, when they went out of their districts to hold court, of putting up at a dollar and-a-quarter a-day boarding house and then charging \$10 a day, paying the \$1.25 out of their pockets and putting into their pockets \$8.75. I repel the charge that the judges of this country are guilty of that. I have no doubt that in many of the cities of our country some of the judges, when holding court there away from home, do spend \$10 a day for travel and board. It is perfectly legitimate. If a judge goes to New York City, for instance, it is perfectly right and proper for him to live in the same style that he does at home. It is proper for him to go to a modern hotel; it is proper for him to have not only his bedroom with modern conveniences, but also to have a parlor or place to do that part of his work that is not usually done in the court room, but in an office. For this he would not be insurable.

The gravamen of this charge is, not that Judge Swayne spent \$10 a day, not that other judges spend \$10 a day, but that, under the guise and pretense of hotel bills and traveling expenses, Judge Swayne was charged and collected in one case \$410 for 41 days, whereas he paid out in that instance only \$57.50 for board, and in no event more than \$50 for railroad travel for both ways, making \$107.50 actually expended by him, if he paid his railroad travel, and I assume that he did, being all told \$107.50 that he actually paid out, whereas he drew \$410 on his certified statement that he had expended \$410. His offense consists of putting into his pocket as private gain the difference between \$410 that he certified to and collected and \$107.50 that he actually expended. Now, that is the case, and the testimony sets out the facts as stated and that are involved in the contention.



Mr. SMITH, of Kentucky. I want to ask the gentleman a question.

Mr. CLAYTON. Certainly.

Mr. SMITH, of Kentucky. If Judge Swayne could have shown that a considerable number of other judges, or all of them, were charging \$10 a day when they were only expending \$2.50 or \$5, or any sum less than \$10 a day, to what extent would that have justified a modification in the construction of this statute?

Mr. CLAYTON. It would not have justified it at all. The fact that one man has done wrong would not justify another man charged with the same offense at the bar of any court anywhere. Were an accused man to say, "It is true I committed the larceny, as charged, but A and B also committed like larceny, and therefore I ought not to be convicted," would not be considered a good defense, either in law or morals.

Mr. BARTLETT. Is it not true that the only suggestion in the paper that has been exhibited here is that some of the judges have charged the full amount, but that there has never been a suggestion from the parties that any judge had not expended the amount he drew?

Mr. CLAYTON. That is true. I stated that. I may say in this connection that the committee thought if they permitted that sort of wholesale or general allegation or insinuation to be made against the other judges, it would be no more than right and fair to bring the other judges here and give them an opportunity to show that they did expend the \$10 a day, and that would have been without authority and would have presented another and protracted investigation of others not under any charge.

Mr. BARTLETT. The record from the Auditor for the State Department which was published in the Post newspaper some time ago, a copy of which you referred to, simply contains the fact that some of the judges, 40 per cent it is said, did charge the full amount.

Mr. CLAYTON. Exactly.

Mr. BARTLETT. But there is nothing in the record to show or no suggestion made that they did not actually expend that amount.

Mr. CLAYTON. No; and I presume that every one is an honest man and that every one of these judges involved in that statement who charged \$10 a day actually expended in traveling and hotel expenses that amount of money. That is a correct presumption.

Mr. CHARLES B. LANDIS. There was not anything on record there in the Treasury Department that Judge Swayne did not expend this amount.

Mr. CLAYTON. I don't know what was on record there except what was shown at the committee hearings.

Mr. SMITH of Kentucky. Mr. Speaker, I desire to ask this question: Did Judge Swayne or his counsel offer proof that any other judge was collecting more expense money from the Treasury than he had expended?

Mr. CLAYTON. No; and there was not an insinuation that any judge had charged \$10 a day and put the difference, \$8.75, as in this case, between that and his expenses incurred and paid, into his pocket.

There was no suggestion of that sort to the committee, and now I understand gentlemen to make that suggestion here—that wholesale indictment against the judiciary of the country. Mr. Speaker. I happen to be informed in a personal way of at least a few of these

judges who sometimes charge \$10 a day and sometimes do not, but every time they have charged \$10 a day I believe they have actually expended it. No complaint can be made of that. If Judge Swayne had expended the \$10 a day in traveling and hotel bills, no strictures would be made here, but he did not expend it. He pocketed the difference between his expense and his collections as pecuniary gain without authority of law, contrary to the statute limiting him to his reasonable expenses. That is the vice of his conduct. He converted this business of going about to hold court into a money-making business and profited in a moneyed way by engaging uniformly and persistently in the practice. The law intended that he should go, not at his own expense, but at the expense of the Government, and intended that he should be quite content with his salary and the reimbursement of sums spent by him as reasonable expenses of travel and board.

Mr. PRINCE. Will the gentlemen yield for a question?

The SPEAKER. Does the gentleman yield?

Mr. CLAYTON. Yes.

Mr. PRINCE. I want to ask for information whether Judge Swayne had a private secretary provided by law?

Mr. CLAYTON. Nothing was said about that.

Mr. PRINCE. Well, I ask, as a matter of fact, do district judges have them?

Mr. CLAYTON. Some of them do.

Mr. PRINCE. Is there an appropriation made for that purpose?

Mr. CLAYTON. So far as I am advised, Judge Swayne did not have one to travel around with him.

Mr. PRINCE. I will ask if there is also a stenographer for his court?

Mr. CLAYTON. He uses a court stenographer.

Mr. PRINCE. There is a court stenographer provided?

Mr. CLAYTON. A court stenographer.

Mr. PRINCE. In his court?

Mr. CLAYTON. Yes; he uses him.

Mr. PRINCE. So that if he saw fit to write instructions or make any preparations of any kind with this court stenographer he could be used by him?

Mr. CLAYTON. He did it and it cost him nothing.

Mr. PRINCE. It cost him nothing?

Mr. CLAYTON. It cost him nothing.

Mr. PRINCE. That is the point I wanted to get at.

Mr. CLAYTON. And I assert here that the only expense that Judge Swayne incurred when he went to Texas was possibly his railroad fare and certainly his hotel bill, in one case board and lodging at \$1.25 a day, and that he expended nothing else. It was incumbent upon him to show, if he could, that he expended more. The committee went fully into this charge, and not a word did he say in reference to it.

Now, then, I commend to gentlemen the reading of the minority views on this proposition, presented by the gentleman from New Jersey [Mr. Parker], when this subject was under discussion on December 13. There was then no difference of opinion among the members of the committee, and there seemed to have been no difference of opinion in this House on that subject at that time. The whole committee and this House then thought that Judge Swayne should be

impeached upon the ground that he had collected more money for alleged expenses than he had in fact expended.

Mr. LONGWORTH. Will the gentleman permit a question?

The SPEAKER. Does the gentleman yield?

Mr. CLAYTON. Yes.

Mr. LONGWORTH. In the opinion of the gentleman, if a civil suit were brought against Judge Swayne to recover the difference between \$10 a day and the amount that he is supposed to have actually expended, could a recovery be had?

Mr. CLAYTON. I think so, and I think furthermore than an indictment would lie against him; but we are neither a civil court nor are we a criminal court, and therefore the gentleman's question is abstract.

Mr. LONGWORTH. Let me go a little further. In the event of such a trial, could Judge Swayne introduce evidence to show that other judges had done the same thing?

Mr. CLAYTON. No, sir; in no court.

Mr. LONGWORTH. Is the gentleman familiar with the case of the United States against Hill, reported in 120 United States?

Mr. CLAYTON. A decision of the Supreme Court?

Mr. LONGWORTH. Yes.

Mr. CLAYTON. I have not read it recently.

Mr. LONGWORTH. If the gentleman will permit me just a moment——

Mr. CLAYTON. Go ahead and read what the gentleman has in mind.

Mr. LONGWORTH. Very briefly, the case was this——

Mr. CLAYTON. I object to the gentleman telling me what the case was. Read from the opinion and I shall listen.

Mr. LONGWORTH. The case was brought to recover fees which were alleged to have been overcharged. It was admitted that it had been the custom for these clerks to charge these fees and to have them allowed. Suit was brought to recover a large amount from this man and his bondsmen. I desire to quote one sentence from the syllabus.

Mr. CLAYTON. Oh, that was an entirely different matter from the one on which we are trying Judge Swayne.

Mr. LONGWORTH. Permit me to read this sentence:

The statute being of doubtful construction——

Mr. CLAYTON. Ah, exactly. That is one point I make.

Mr. LONGWORTH. Let me continue the reading:

The statute being of doubtful construction as to what fees were to be returned, the interpretation of it by judges, heads of departments, accounting officers, contemporaneous and continuous, was one on which the obligors in the bond had a right to rely, and, it not being clearly erroneous, it will not now be overturned.

Mr. CLAYTON. Exactly; where the statute was of a doubtful character and payment had been made, and civil suit was then brought against the obligor on the payee's bond, as well as the payee himself, to recover the money back.

Mr. JAMES. But that decision was predicated upon the right of a third party to protection in a case where he, as surety, bound himself to pay any loss in case his principal should violate his official duty.

Mr. CLAYTON. Exactly; and that case is not on all fours with the one here. I can give the gentleman cases that are more nearly analogous——

Mr. LONGWORTH. I do not mean to say, if the gentleman will permit, I did not say that they are exactly alike. I am simply asking the question whether in this case if it had been the custom of judges to proceed on the theory that they were to be allowed \$10 a day—this statute never having been construed by the court and not being absolutely plain on its face—if it was evident that it was the custom of others to do it, exactly as in the case of the *United States v. Hill*, that custom existing for a number of years, it was not competent to show that such was the custom.

Mr. CLAYTON. Now, is the gentleman through with his question? Now, let us see if I can unwind it. The question was so long and full of parenthetical clauses, but I will undertake to unravel it. In the first place, it is not true, in my opinion, that this statute allowing expenses of judges is at all doubtful. It is plain, and, especially in view of legislation on this subject, I commend to the gentleman to read the letter of Auditor Timme, published in the testimony here, and there he will see the different acts of Congress relating to the compensation of judges, and he will find that Congress by this act never intended that the judges should have any pay except their salaries.

Mr. PALMER. Excuse me; there is an act of Congress that absolutely prohibits them receiving any compensation except their salaries.

Mr. CLAYTON. Yes, sir; that is the act of 1886; that is my recollection.

Mr. PALMER. Even before that.

Mr. CLAYTON. Yes.

Mr. LACEY. It is the Revised Statutes of 1871.

Mr. CLAYTON. There is an act in the Revised Statutes—I have it here somewhere——

Mr. LACEY. Except in the State of New York.

Mr. CLAYTON. But I will not stop now. Now, the case the gentleman has referred to is not like the case here. That involved a construction in a civil suit of a doubtful statute, where the court was doubtful——

Mr. LONGWORTH. I do not desire to take up the gentleman's time, but if the gentleman will read the statute involved in this case I think he will find that it is plain and——

Mr. CLAYTON. Read it. The court said it was doubtful.

Mr. LONGWORTH. I will be glad to do so if the gentleman will pardon me. There are three statutes governing it. The first is:

Every clerk of a district court shall, on the first days of January and July, in each year, or within thirty days thereafter, make to the Attorney General, in such form as he may prescribe, a written return for the half year ending on said days, respectively, of all the fees and emoluments of his office, of every name and character, and of all the necessary expenses of his office, including necessary clerk hire, together with the vouchers for the payment of the same for such last half year. He shall state separately in such return the fees and emoluments payable under the bankrupt act. Said return shall be verified by the oath of the officer making them.

The next statute is this:

No clerk of a district court shall be allowed by the Attorney General to retain of the fees and emoluments of his office for his personal compensation, over and above his necessary expenses, including necessary clerk hire, to be audited and allowed by the proper accounting officers of the Treasury, a sum exceeding three thousand five hundred dollars a year for any such district clerk, or exceeding that rate for any time less than a year.

Again:

Every clerk shall, at the time of making his half yearly return to the Attorney General, pay into the Treasury, or deposit to the credit of the Treasurer, as he may be directed by the Attorney General, any surplus of the fees and emoluments of his office which said return shows to exist over and above the compensation and allowances authorized by law to be retained by him.

Under this statute this clerk collected \$3 for every naturalization paper. It was the custom for years——

Mr. CLAYTON. The gentleman will pardon me, but I do not understand what he is driving at. Will you please start your question again?

Mr. LONGWORTH. If the gentleman will permit me to state it again——

Mr. CLAYTON. I yielded to the gentleman for a long time to read his statute; now, if the gentleman is going to make a long statement——

Mr. LONGWORTH. I beg the gentleman's pardon.

Mr. CLAYTON. Now, let the gentleman read the syllabus. The gentleman will have an opportunity in his own time to make an argument.

Mr. LONGWORTH. I will only be too glad. The gentleman yielded to me to read the statute.

Mr. CLAYTON. I hope the gentleman from Ohio [Mr. Longworth] will not thrust into my argument——

Mr. LONGWORTH. I am simply trying to point out the fact that in my opinion evidence should have been allowed as to custom.

Mr. CLAYTON. I do not question the gentleman's purpose. What do you want to know of me?

Mr. LONGWORTH. I want to know——

Mr. CLAYTON. Let the gentleman read the syllabus, and I will see.

Mr. LONGWORTH. It was the custom of the United States courts in Massachusetts, known and approved by the judges, for the clerk to charge \$3 as fees in naturalization proceedings. The clerk of the district court never included these fees in his return, although it was provided in statute. This fact was known to the judges, to whom the accounts were semiannually exhibited, and by whom they were passed without objection. And the court held that the statute, being of doubtful interpretation——

Mr. CLAYTON. That does not apply to this case at all. Now, if the gentleman is through, he has his authority injected into the record and has his position stated. I will continue my remarks.

Mr. LONGWORTH. Then the position of the gentleman is that this statute is absolutely plain on its face?

Mr. CLAYTON. It is absolutely plain and admits of no doubt.

Mr. LONGWORTH. And that no other interpretation was made of it by any other judges?

Mr. CLAYTON. No other construction, in my opinion. But if so, that has nothing to do with this case.

Mr. LONGWORTH. By any other judge?

Mr. CLAYTON. I do not think any other judge could put any other construction upon it.

Mr. LONGWORTH. And therefore no evidence ought to be allowed as to the custom?

Mr. WM. ALDEN SMITH. It seems to be a court of final resort.



Mr. CLAYTON. Surely the gentleman from Ohio [Mr. Longworth] will not expect me to answer all his conclusions in my time.

Mr. PRINCE. As I understand, I want to have the gentleman himself clear upon this proposition, that there are no stenographers in the United States district courts.

Mr. CLAYTON. Oh, no; I never said that. Do you say there are?

Mr. PRINCE. I say that in some of the courts they have stenographers, but not under any act of Congress.

Mr. CLAYTON. But they are provided by law?

Mr. PRINCE. I am told that that is the practice in Texas, the State where Judge Swayne is charged with having falsified his accounts.

Mr. HENRY of Texas. If the gentleman will permit me, I will say that his statement in regard to the practice in Texas is correct.

Mr. CLAYTON. I know as a matter of fact that in Alabama the judges do have them.

Mr. HENRY of Texas. Let me say that in the State of Texas we have four district judges, and each one of the district judges is provided with a stenographer. His compensation is fixed, whether allowed or not by the Attorney General, and I know personally that they have a court stenographer in each one of those courts, and I understand they have them in many other Federal courts.

Mr. CLAYTON. I will say for the benefit of the gentleman from Illinois [Mr. Prince] that there is a bill now pending before the Committee on the Judiciary in this House providing for stenographers throughout the country and for the rate of their compensation.

Mr. PRINCE. That was just the point I was getting at.

Mr. CLAYTON. There is no doubt about that, but as a matter of fact, wherever I have been, the judges do have stenographers; and the Attorney General of the United States, under some allowances intrusted to him, pays them out of that fund, and the judge in no case pays them. Now, is that clear?

Mr. PRINCE. It is clear from your standpoint, but the point I was seeking to show——

Mr. CLAYTON. Let me advert briefly to the question asked by the gentleman from Ohio. In the case cited by him payment had been made under doubtful statutes and suit was brought to recover back, and the court held the statutes (the gentleman from Ohio has just read them) doubtful. And, further, that because the heads of departments, and accounting officers had contemporaneously and continuously interpreted them in favor of the payment, the obligor on the principal's or payee's bond had a right to rely on such interpretation.

This is the syllabus on the case of *United States v. Hill* (120 U. S., 169, 170), which has been referred to:

It was the custom in the United States courts in Massachusetts, from 1839 to December, 1884, known and approved by the judges, for the clerk to charge \$3 as fees in naturalization proceedings. The clerk of the district court never included these fees in his returns. That fact was known to the judges to whom his accounts were semi-annually exhibited, and by whom they were passed without objection in that particular. Relying on that custom, and believing that those fees formed no part of the emoluments to be returned, the clerk of the district court appointed in 1879 did not include those fees in his accounts. This was known to the district judge when he examined and certified the accounts, and his accounts so made out, to July, 1884, were examined and adjusted by the accounting officers of the Treasury. Under a rule made by the district court in 1855 the clerk had charged and received \$3 as a

gross sum for examining, in advance of their presentation to the court, the application papers and reporting to the court whether they were in conformity with law; and had made no division for specific services according to any items of the fee bill in paragraph 823 et seq. of the Revised Statutes. In a suit brought in December, 1884, on the official bond of the clerk against him and his surety, to recover the amount of the naturalization fees:

*Held*, (1) the provision in section 823, taken from section 1 of the act of February 26, 1853 (c. 80, 10 Stat., 161), that the fees to clerks shall be "taxed and allowed," applies, *prima facie*, to taxable fees and costs in ordinary suits between party and party prosecuted in a court; and there is no specification of naturalization matters in the fees of clerks.

(2) The statute being of doubtful construction as to what fees were to be returned, the interpretation of it by judges, heads of departments, and accounting officers contemporaneous and continuous, was one on which the obligors in the bond has a right to rely, and, it not being clearly erroneous, it will not now be overturned.

It is easy to differentiate the proceedings here from that case. Let me name a few of the salient features involved in the controversy here. This is an impeachment case, and it is *sui generis*. It is not an action to recover back money voluntarily paid under statute uniformly held by proper authority that the payment was lawful, which statute was afterwards held by the court to be at least doubtful, and that for this reason and under these circumstances the obligor on the defendant's bond should be excused from refunding. The statute providing for expenses of judges is in this language:

For reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in settlement of his account with the United States.

This required Judge Swayne to certify to the amount he had expended for travel and attendance on the court. It provides no sort of fees, perquisites, or compensation. It does not provide \$10 per day as commutation for travel and board. It takes care that the judge shall be refunded what he actually paid and no more. There can be no doubt that if Judge Swayne had certified that he had attended the court in the instance which I have mentioned, 41 days, and had expended railroad fare, including meals and sleeping-car berth en route, \$50, and \$57.50 for board and lodging and no more, the Auditor would have allowed him \$107.50 and no more. This doctrine would have been approved:

Acts relating to the fees and compensation of public officers are strictly construed, and such officers are only entitled to what is clearly given by law. A law will not be construed as giving an officer additional compensation for past services unless the intent is clearly expressed. A city charter provided that "the aldermen shall not be allowed to receive more than \$100 each in any year as compensation for their services." The charter made then *ex officio* members of the board of registration in their respective precincts and inspectors of election. It was held that they were not entitled to any additional compensation for these *ex officio* services. (Lewis's Sutherland's Statutory Construction, vol. 2, 2d ed., p. 1298.)

*Dunwoody v. United States* (22 C. Cls., 269, 278) and *Hereblein v. City of New Haven* (54 Atl., 298-299; 75 Conn., 545), and *United States v. Shields* (153, 91) lay down the rules governing the construction of the statute allowing expenses and fees to public officers.

Mr. PRINCE. There was no provision of law, no general law, by which the district courts were allowed stenographers.

Mr. CLAYTON. You are correct in that.

Mr. PRINCE. But there is a bill of that character before your committee.

Mr. CLAYTON (continuing). And yet they are provided in the manner in which I have told you, and not at the expense of the judge. So that, coming back to this case and not to any other case, it is a case of a plain statute, and taking the antecedent statutes and taking the statute now on the books, which is no such statute as the gentleman refers to, but a plain statute, prohibits the judges from receiving any compensation except their salaries. To guard against any possible misconstruction on the subject, this statute was made plain, limiting the expense for traveling and attendance. So that this statute does not admit of doubt. There is a section of the Revised Statutes which says that district judges can not take any compensation except their salaries. This statute, under which he drew \$10 a day is itself a statute restrictive in its nature. The words are "reasonable expenses for travel and attendance." I submit if the statute does not mean for reasonable expenses for travel and reasonable expenses for attendance when attending his court out of his district—his expenses of travel and board incurred necessarily in attendance upon court—not compensation. It would be a violent stretch of this statute to put any other construction upon it.

Now, Mr. Speaker, I do not care to dwell longer upon this, the first ground of the impeachment. Of course, if gentlemen of this House think that it is proper for them under this evidence to excuse the judge for the violation of positive law, for taking more money than the law allowed, for putting \$8.75 a day in his pocket above his expenses in the face of the provision of the statute fixing the allowance at the reasonable expenses for travel and attendance, and in the face of another statute which requires that his compensation shall be limited to his salary—if you see proper to excuse him, why, that is your concern, not mine. Why not repeal both of these statutes? Why not take the limitation off and say that the judges shall have \$10 a day in lieu of their expenses for travel and attendance?

Mr. Speaker, I shall consider now for a few moments the use of a private car of the receiver of a railroad company then being operated under the authority of Judge Swayne and his court. Here let it be noted that in every case where Judge Swayne has been charged with any offending he and his friends have been resourceful in the invention of excuses. The facts charged against him are frequently admitted. This is true, I think, in reference to all of the charges. To meet palpable misbehavior in office, the substantial facts, excuses are interposed. I submit to the Members of this House if in the course of the experience of any man here he has ever heard as many charges and like charges as are here brought forward made against any upright, law-respecting, or law-observing judge? Not one of the judges who have been impeached heretofore had as many accusations made against him as are made here. No one has had as many witnesses against him as are here introduced, and no one has been charged with so many forms of misbehavior in office as Judge Swayne. Why, the misbehavior of Judge Pickering, for instance, was mild as compared with this case, and yet Judge Pickering was impeached and removed from office.

Let us come to the question of the use of the car by Judge Swayne. The minority of your committee seemed to think that a vote of censure should be had, or a censure of some sort in some way and nothing more, should be imposed upon Judge Swayne. The facts are admitted by them substantially in the minority views presented that

he did, improperly, according to their conception, use the car of a receiver of a helpless corporation in his control and power; that he used it from Guyencourt, Del., for himself and his family, and that he used it likewise to and from California. But it is said that it was not used at the expense of the railroad company. At whose expense was the car used and the trips made? He paid nothing for the car or its transportation. The receiver in his court permitted it to be used at the expense of the estate in his hands, in custodia legis, under Judge Swayne's control. It is suggested by some witness in the case or by some gentleman here in this argument that the car was improved by use rather than by standing idle. Well, I suppose if Judge Swayne had taken many, very many, of these trips it never would have cost the railroad company anything is the assertion. That a hundred or a thousand trips never would have been at the cost of the company, and that the car would have been constantly becoming better and better; and then we should have had a curious thing in nature or mechanics—a piece of machinery made by human hands, instead of wearing out by constant use continually becoming better and better. But this is "to reason most absurd."

Of course this use of the car was at the expense of the railroad. It is admitted that the conductor and cook and brakeman on this car, wherever they went, were paid by the company. What remuneration went to the railroad company for the use of these employees by Judge Swayne? If the receiver had no use for the conductor, brakeman, and cook that were on this car with him on the California trip and on the Delaware trip, why did not the receiver, as was his duty, discharge these unnecessary employees and save the amount of their wages to the railroad? No; he kept them and let them draw wages while serving Judge Swayne on his junketing tours on this car of the crippled corporation whose property and assets belonged to the creditors and stockholders and not to Judge Swayne or his creature, his receiver.

Now, some gentleman may think that is a mere impropriety and not an impeachable offense. It is a misbehavior in office, and the judge did not seem to deny the facts in that case. He was asked on cross-examination by Mr. Palmer if he thought he had a right to do it, and he sought to justify his conduct. He went on to say that during a period of six years, while in the office of judge, he had had ten railroads in the hands of receivers in his court; as much as to say, "such use of the assets and employees of the bankrupt estate was a good thing; I have enjoyed such use not only in this case, but I have enjoyed it in nine other cases."

Now, will any man rise up here and tell me that an honorable and high-minded judge of the United States court of this country would indulge in such practice? Will they offer that excuse for Judge Swayne in this misbehavior? I happen to know, Mr. Speaker, that in my own State there is a judge, appointed by the present Chief Magistrate, and we applauded him for the appointment, who not only will not use the private car of the receiver, but who is so circumspect that he will not travel in any way at the expense of any railroad.

The wholesale insinuations that have been made in this debate against the judiciary of the country are improper. I do not believe they would be supported by facts upon examination. If I did think that they could be so supported, I would feel constrained to introduce



into this House a resolution of inquiry on that subject, and let the judges be investigated and exposed to the righteous indignation of the country. But I entertain no such belief. I know that many of these men are high minded and above that. For three years, in my humble capacity as district attorney, I came in contact with some of these judges, and that association convinces me that the judges would not engage in the perfidious practice that is here insinuated in this case for the extenuation of Judge Swayne's offending. I think that he has committed a serious misbehavior in office. A man does not have to violate a positive statute, as everybody knows, to be guilty of an impeachable offense. He does not have to commit larceny or any other crime to be guilty of an impeachable offense.

Impeachable misdemeanor means misbehavior—wrongdoing—acts and conduct that would tend to bring reproach and disgrace on the judiciary; acts or conduct that would teach or lead the people to lose respect for the judicial branch of our Government; acts wrong, acts improper, so highly improper, so grossly improper as to bring reproach upon this branch of our public service. When an act like this here charged is committed, *colore officii*, as in this case, as Judge Swayne did in taking and using this car and employees, a misbehavior of impeachable gravity has been committed. Why, any gentleman knows that if a private citizen had gone to that receiver and said, "I want to go in this car without pay to Delaware; I want to go to California and take my family with me"—we would all like to go to that great State on the Pacific slope that sends our good friend Mr. Gillett to Congress—if a private individual had made that suggestion to the receiver, the receiver would have scorned it.

But the judge, who had control of the receiver, auditing his accounts, fixing his compensation, the man in the exercise of his power as judge who could feed the receiver liberally or could feed him poorly, because he was judge, said that he desired to take these trips obtained the car and service free of expense to him. He said he and the receiver had had a previous conversation about one of these trips. Oh, wouldn't you like to be a Federal judge if these things are right and are to be excused? Put a railroad into the hands of a receiver and then tell your receiver you want to go to Niagara Falls and Canada in the summer time, or to the great State of California, or, what is still better, that you want to make a trip into the greater State of Alabama. [Laughter.]

You would say to the receiver, "Fit up your private car with good things, fit it all up, and give me servants and charge it to the railroad." You, not having paid a cent for this grand trip, afterwards come before the public, before the Congress, say that you are excusable upon the puny pretext that it did not cost the railroad anything, or upon the other equally puny pretext that there is no evidence to show that it influenced any of the judge's official conduct. Perhaps not, but it influenced the receiver's official conduct. It influenced the receiver's official conduct by making him take the judge, who had the power to fix his compensation, at the expense of the railroad in the matter of salaries for employees, at the expense of the railroad in the matter of provisions, at the expense of the railroad for the wear and tear of the cars, at the expense of the railroad, it may be, for mileage or trackage—I do not know as to that—all at the expense of the railroad, and it matters not whether the judge



was influenced or not, the receiver did wrong, to the detriment and injury of the railroad then in his hands, and the judge approved his account of expenses for the wrong. That is the contention. Now, if gentlemen think slightly of that, think there is nothing impeachable in it, that that is not serious misbehavior, that it is to be excused or laughed away, all well and good. This is reasoning of a new kind and the suggestion of morality of a novel variety. I hope if such view is taken here that the high-minded judiciary of this country will never subscribe to such a doctrine and engage in such a practice. Let me confidently assert that they never will.

Mr. Speaker, I have heretofore argued at length the question of nonresidence. This is another misbehavior that is sought to be minimized here. Some of the friends of Judge Swayne have in this debate set up a defense in the nature of confession and avoidance. It seems that in the arguments which have been urged in the contention is that the judge should not be impeached on the ground that he did not reside in his district, it is assumed that Judge Swayne never acquired a residence in the northern district of Florida. He himself may be said to have admitted that, and to have insisted that his nonresidence caused no trouble, inconvenience, delay, expense, or injury whatsoever. Gentlemen in this House argue that no harm came of this nonresidence, and that therefore he should not be impeached. The doctrine *de minimis non curat lex* has no application here. The plain statute requires a judge to reside in the district for which he is appointed judge, and the failure to do so is made highly penal, and is in express terms a high misdemeanor. The statute allows no discretion or excuse. It can not be violated with impunity upon the claim that no harm comes of the violation. The statute is plain and mandatory, and it really is of no consequence whether or not harm came of its violation. The statute denounces the failure, the simple failure, to reside there as a high misdemeanor and an impeachable misdemeanor.

I regret that it is of no importance whether injury did or did not follow from his nonresidence. But, as a matter of fact, injury did follow on account of it. Let us look at the testimony. C. H. Laney, whose testimony appears on pages 8 and 9 of the volume of testimony printed, says:

Q. Do you know whether he has been here except when he was holding court?—A. I think it has been Judge Swayne's custom to come here in the fall, before he held his court, go from here to Tallahassee, hold court there, come back by here, and then go away, come back, hold the spring term, and then go away for the summer and remain away until he came back to attend court in the fall. That has been varied recently. He has been here more recently—a good deal this year.

Q. Do you know whether or not that has been since the session of the last Florida Legislature?—A. Yes, sir; since the resolution passed in the last Florida Legislature he has been here a lot more frequently than before.

\* \* \* \* \*

Q. You say Judge Swayne would finish his courts and go away. Do you know whether that resulted in detriment to those having business in his court?—A. I think so.

Q. You only think so?—A. I know so.

Q. State in what way.—A. Well, in admiralty cases I have heard that more as a matter of complaint; I have had very little admiralty practice.

Mr. LITTLEFIELD. What page are you reading from?

Mr. CLAYTON. I am reading from page 9.

Q. How long have you heard that?—A. Oh, off and on ever since I have been knowing him.

Now, I refer to the testimony of W. A. Blount, on pages 19 and 20.

Mr. GAINES of Tennessee. There is a good deal of admiralty practice down there, is there not?

Mr. CLAYTON. The gentleman from Tennessee asks me about the admiralty practice at Pensacola. I may say that Pensacola is one of the leading Gulf ports. I do not myself know the extent of the admiralty practice there, but I assume that there is a great deal. I know that a great deal of Alabama coal finds its seaport at Pensacola. It is a great port for the exportation of lumber and cotton, and a great many ships come from different foreign countries. I assume that there is, or ought to be, a great deal of admiralty practice there; but the testimony of some of the witnesses in this case tends to show that the admiralty practice was diminished because the judge was not there to attend to admiralty business, and the record also shows——

Mr. LITTLEFIELD. What witness states that, please?

Mr. CLAYTON. I said some of the evidence of some of the witnesses tends to show that. Now, for the benefit of the gentleman, I may say he will find that in the printed testimony.

Mr. LITTLEFIELD. Was the gentleman going to read from Mr. Blount's testimony?

Mr. CLAYTON. Yes, presently; but I shall just answer the question of the gentleman from Tennessee first. Now, I will call attention to the testimony of Mr. Coombs. You will find it there. He says he settled a case. I will give you the particular reference when I conclude. There are some other witnesses who say that they could not get a trial, and the case was compromised.

Mr. GAINES of Tennessee. Does not Judge Swayne say somewhere in his testimony that Pensacola was the principal place where he held court?

Mr. CLAYTON. I do not remember that he said it in his testimony; but that is a fact, nevertheless.

Mr. LITTLEFIELD. That is the principal place. I do not know whether he said it or not.

Mr. CLAYTON. The report of the Attorney General will show that.

Mr. LITTLEFIELD. And the analysis which I made in my speech will show it.

Mr. CLAYTON. Now, I read from the testimony of W. A. Blount, on pages 19 and 20. First, I read from page 20:

Q. Do you know, as a matter of fact, there was complaint of injury being done by his absence?—A. Oh, yes—

Says Blount—

Speaking exactly, I do not know whether there was complaint of injury. I have heard frequent complaints of parties being inconvenienced.

This was Blount, who was *amicus curiæ* of the court. That is on page 20. Now, I should have read from page 19 first.

Mr. LITTLEFIELD. Where is it that Mr. Blount complains of inconvenience on page 20?

Mr. CLAYTON. Let me give you first, at the bottom of page 19:

Q. Do you know whether his absence has resulted in any detriment or injury to those having business in the court?—A. It has resulted in inconvenience; whether it has resulted in detriment would be dependent, possibly, as to whether matters could be decided as well upon written as upon oral argument, and whether certain matters ought to be decided *ex parte* instead of *inter partes*.

Q. Do you know what effect his absence has had upon admiralty proceedings, whether it resulted in delay and expense to parties litigant?—A. Assuming that the cases would have been decided rapidly if he had been present, there has been.

Mr. LITTLEFIELD. Read the balance of it.

Mr. CLAYTON. I am going to do that without suggestion from my friend.

Q. Do you know, as a matter of fact, there was any complaint of injury being done by his absence?—A. O, yes; speaking exactly, I do not know whether there was complaint of injury. I have heard frequent complaints of parties being inconvenienced.

Mr. LITTLEFIELD. Has the gentleman any objection to reading the second question on the top of the page?

Mr. CLAYTON. None at all.

Q. Do you know of any cases which have been delayed by his absence?—A. I can not truthfully say that I know of any; possibly there have been; it is impossible for me to go back and locate them.

Mr. SMITH of Kentucky. I would like to call the attention of the gentleman to the statement by Judge Liddon, on page 26, in that connection.

Mr. CLAYTON. I am coming to that. I will come now to the testimony of J. E. Wolf, on page 58:

I don't know of my own knowledge of any particular delay or inconvenience to business.

Q. Do you know anything about the admiralty practice—delay to litigants?—A. Well, I had very little admiralty practice; I can't say I had any trouble about delay; the only thing I could see arising from the judge's absence, where delay would matter much, is where it is necessary to have orders from the judge to arrest property before leaving the district, probably some delays in that way.

Mr. LITTLEFIELD. But he does not specify any delay.

Mr. CLAYTON. I have read the testimony, and the gentleman from Maine can make his own argument. I do not intend to be discourteous to the gentleman, but he can make his comments later.

Mr. LITTLEFIELD. Will the gentleman excuse me for asking him another question?

Mr. CLAYTON. Certainly.

Mr. LITTLEFIELD. Isn't it a fact that Wolfe had been district attorney for two years?

Mr. CLAYTON. Yes; and the gentleman from Maine so stated in his speech the other day.

Now, on page 59 he says:

Q. What proportion of the year would you say Judge Swayne was absent from his office?—A. My recollection is that he held two terms of court in Pensacola and a term in Tallahassee, or the usual course was for us to hold the spring term in April or May, and that term would last from ten days to two weeks—sometimes a shorter or longer time. Judge Swayne would generally arrive here a day or two before court met, remain until the business of the court was disposed of and go away; then he would hold a term of court in the latter part of October, of the same length of time. October—ten days or two weeks, possibly a little longer, if the docket was unusually heavy. I should say probably six or eight weeks in the year would represent the time he was in the district. Possibly he would be here a day or two some time in June to approve the accounts of the court officers—be here a day or two, attend to that and go away again.

Now, A. C. Blount, on the top of page 38, was asked:

If that notice was given, where did he say that he could be found? At Guyancourt, Del., at his home, or where he lived?

By Judge PALMER:

Q. Didn't you find it a little bit inconvenient to practice law with a judge up in Delaware?—A. Somewhat.

Q. How long did these absences continue?—A. Well, I should say from the spring term to the fall term. The judge would be here off and on during the winter, as I remember, sometimes holding several terms from November to March of more or less length.

On page 143 is the testimony of Montgomery Marshall, which I will read:

Q. Where do you live, Mr. Marshall?—A. At Pensacola.

Q. What business are you in?—A. The whisky business.

Q. Was there any proceeding brought against you—involuntary proceedings in bankruptcy—in this court?—A. Not right recently; two years ago.

Q. Do you know what attorney brought them?—A. Mr. Tunison.

Q. What time was that? A. About the last of May or first of June.

Q. Petition filed in involuntary bankruptcy—did you deny your insolvency?—A. Well, I went before the United States court. Mr. Nicholson was referee——

Q. Did you put in your answer denying your insolvency?—A. No, sir.

Q. Why?—A. My lawyers told me the judge was out of the State and I could not get a trial before November, and that they could get a compromise for less than it would cost to carry me over.

Q. Would that break up your business——

Judge AVERY. We object.

Q. Why did you compromise?—A. Because the judge was not here; because I could not get a hearing.

Mr. LITTLEFIELD. May I ask the gentleman a question?

Mr. CLAYTON. Yes.

Mr. LITTLEFIELD. Does it appear at what time in May or June that was?

Mr. CLAYTON. He says about the last of May or the first of June.

Mr. LITTLEFIELD. Has the gentleman examined the analyses of the times when the judge was holding court in other places, so as to be certain that he was not in some place outside of Florida?

Mr. CLAYTON. Possibly he may have been out at that particular day holding court somewhere else, but he did not stay there the whole summer long and until November. In May or June he may possibly have been away holding court, but the gentleman from Maine would not contend that he held court from the 1st of May up to the 1st of November outside of Florida, or anywhere near that length of time continuously?

Mr. LITTLEFIELD. Oh, no.

Mr. CLAYTON. Of course not; it would have been an impossibility.

Mr. LITTLEFIELD. Is it not a fact, in the practice of that court, that they only try out questions of fact at regular terms?

Mr. CLAYTON. There is nothing in the evidence upon that point.

Mr. LITTLEFIELD. I did not know but that the gentleman might be familiar with the practice.

Mr. CLAYTON. I do not think that is the practice. I think in bankruptcy proceedings where a man's property is involved that they arrange and dispose of that question differently. But I do not know about that.

Mr. LITTLEFIELD. It is a regular jury trial?

Mr. CLAYTON. I so understand.

Mr. LITTLEFIELD. They do not have juries except at regular terms?

Mr. CLAYTON. Not that I know. The gentleman may be right in that contention. I do not undertake to say. I am merely stating what the testimony shows; and I draw my inferences, and of course the gentleman from Maine is at liberty to draw his own inferences. He is as capable of drawing them as I am.

Mr. LITTLEFIELD. My only desire is to have the record show, as the gentleman goes along, what the facts are. I simply suggest this in order that the record may show as the record proceeds.

Mr. CLAYTON. I am much obliged to the gentleman, because I want the whole truth.

Now, I refer to the testimony of E. T. Davis, page 126, beginning toward the bottom, speaking about a case that had been tried, another case, in which he wanted his bill of exceptions. He says:

I prepared my bill of exceptions, presented it to Mr. Blount; he objected to it on account of those documents; they were not included. I then forwarded it to Judge Swayne at Delaware. I made my replication; he came back in June; ordered me to include these documents. Some of these Mr. Blount furnished me and Mr. Fisher; the others were forwarded back to Tallahassee. I had to go there to get transcripts from the records; made transcripts of all I could get hold of. He made his objections; I made my replication. I forwarded the bill to Guyencourt. It had consumed nearly two months, and he retained it, the last time I sent it to him, nearly two months. When I sent it the last time I wrote a letter stating that my time was very short in which to get the writ of error. He sent them back to me. After I had filed them I got a telephone message from Mr. Blount saying he had telegraphed Judge Swayne, objecting to my using the bill of exceptions.

William McCaleb was associated with me at New Orleans; he prepared the writ of error. When I got back from there I found a letter from Judge Swayne, requesting me to submit the bill to Mr. Blount and send it back to him; the bill of exceptions was filed.

\* \* \* \* \*

I sued out a writ of error; Mr. Blount made a motion to dismiss the bill of exceptions on the grounds that the bill was not the bill Judge Swayne had signed, and certain other things which you will see in the record. So afterwards he made affidavit, Judge Swayne made a certificate, I made my affidavit, and after the papers were presented Mr. Blount withdrew his motion; the only things which were changed were those changed at Mr. Blount's instructions; afterwards Mr. Blount took the bill of exceptions and again compared it with his, which he had changed, and he just struck out the name Chaudon and inserted the name Jeudon; Jeudon was a party at interest who was introduced in these records, and the records showed it was Chaudon instead of Jeudon.

By Mr. GILLETT:

Q. What is the point in this?—A. The point is to show the embarrassment and injury resulting in having to secure this writ of error and prosecute this suit to a trial.

By Judge PALMER:

Q. That was because the judge was not here?—A. Yes.

Q. Corresponding backward and forward, in settling the bill of exceptions?—A. Yes.

Q. After signing it somebody sent a telegram to him to change it?—A. Yes.

Q. But the bill of exceptions was already filed?—A. Yes.

By Mr. GILLETT:

Q. You have lost none of your rights in the courts?—A. We have lost money.

By Judge PALMER:

Q. And you have lost peace of mind?—A. Yes. This was a very expensive case; it cost \$2,000 to make up the record—a lot of money.

By Judge CLAYTON:

Q. You were put to great inconvenience?—A. Yes.

Q. If the judge had been here in the district you would not have had to do all this?—A. No, sir.

By Mr. GILLETT:

Q. What expense were you put to?—A. Going before Judge Shelby for writ of error; going to Tallahassee to get records. If the records had been permitted to remain here in court by Judge Swayne—I wrote him a letter to Pensacola after I got to Tallahassee—and if he had been there I would not have had to incur the expense of another trip.

Q. What were the expense you were put to? What did it cost?—A. I think it is \$14.70; I was there eight days. In fact, I made two trips.

Q. You mean that the railroad fare was that much?—A. Yes.



By Judge CLAYTON:

Q. If the judge had been there you would have been saved that?—A. Yes

Q. What was the expense to Huntsville?—A. \$37, I think.

By Judge PALMER:

Q. And all this extra time and energy. Were you doing this for fun, or was your client paying for it?—A. Yes; they were paying for it.

Q. Was there delay?—A. Yes; I had only two or three days' time before my time would have expired. I will state here that after the writ of error had been issued by Judge Shelby I met Mr. Marsh on the street one day and he told me he had been instructed not to permit me to use that record. I told Mr. Marsh that he had no jurisdiction, as the writ of error had already issued. I had made an agreement with him if I made up the record he would divide the fees with me. The whole amount would be about \$300. I think \$147 is the fee I paid him in a check. He told me he would not accept the check then; he would see me that evening. I told him I would call that evening; I wanted to take that record with me. When I came back he stated he did not have the record quite finished, but he would send it over, so I paid him his check and the next morning the paper came over.

Mr. LITTLEFIELD. Mr. Speaker, may I ask the gentleman a question?

Mr. CLAYTON. Certainly.

Mr. LITTLEFIELD. Whether or not this instance that Mr. Davis refers to did not occur during the summer vacation?

Mr. CLAYTON. Yes; I think it was some time during the summer. I will state to the gentleman that when I looked the record over and print, if I can, I shall ascertain the date and insert it in the Record, or some gentleman opposed to impeachment can do so.

Mr. LITTLEFIELD. Is it not also true that the record substantially discloses that if this Mr. Davis had been diligent in preparing his bill of exceptions at the time the case was tried he could have obviated all the difficulties?

Mr. CLAYTON. I think not. I think he was diligent and did his "everlasting best," to use a vulgarism, to get the record. I think he was put to great trouble and expense and inconvenience on account of Judge Swayne not being there. That is my inference from the testimony.

Mr. LITTLEFIELD. Certainly, I do not complain about it. Is not this substantially the only reasonably well-authenticated, specific instance of inconvenience in the whole record?

Mr. CLAYTON. No; I think not. I think these other cases that I have referred to show that, though they do not go into the particulars that Mr. Davis does.

Mr. LITTLEFIELD. They do not give any specific instance.

Mr. CLAYTON. Well, because, as Mr. Blount says, he made no particular note of these matters as they occurred from time to time. He did not charge his memory with them.

Mr. LITTLEFIELD. Mr. Blount says that he did not know of any case.

Mr. CLAYTON. He said, in effect, that he could not recall any.

Mr. LITTLEFIELD. Well, that is the substance of it, is it not?

Mr. CLAYTON. He could not recall.

Mr. LITTLEFIELD. What a man can not recall he does not know.

Mr. CLAYTON. However, we will have no difference about that, because I have read Mr. Blount's testimony and that will appear in the record.

Mr. LITTLEFIELD. Certainly.

Mr. CLAYTON. And the gentleman will draw his conclusions from it and I shall draw mine. The gentleman will remember that I stated in the outset that whether or not Judge Swayne's absence created cost and inconvenience was, in my opinion, immaterial, but it seemed to weigh with some of the gentlemen here, because of some of the views expressed by them during this trial, and for the benefit of those gentlemen I desire to point out in the record cases where it was alleged inconvenience and expense and trouble had arisen because of Judge Swayne's nonresidence in the district.

Mr. LITTLEFIELD. The gentleman says that it seemed to weigh in their minds during this debate.

Mr. CLAYTON. During this discussion here. Now, I think that is true of the gentleman from New York [Mr. Cochran], as evidenced by some of the questions that he asked the gentleman from Maine [Mr. Littlefield].

Mr. LITTLEFIELD. Yes; I think the gentleman is right.

Mr. CLAYTON. About the inconvenience and expense.

Mr. LITTLEFIELD. It was the question that he asked the gentleman from Pennsylvania [Mr. Palmer].

Mr. CLAYTON. And I am citing this testimony and referring to it not because I think it is at all material to the case, but some gentlemen differ from me.

Mr. LITTLEFIELD. I understand the gentleman perfectly.

Mr. CLAYTON. Now, Liddon, on page 22:

Q. During the years you lived in Pensacola state what length of time, approximately, you know Judge Swayne spent in Pensacola.—A. Well, I can't state exactly the amount of time he was here or the time he was gone. I know he was gone a great deal of the time. I have specially in mind a case of libel of an Austrian bark, *Captain Steiner*. I think that libel was filed about July. We wanted to get it adjusted. Our firm—the firm of Liddon & Eagan, as it was then—inquired when Judge Swayne would be back, and we ascertained he would not return until November.

Q. What part of the year was that?—A. July, I think; the records will show. Our information was that he would not be back until November. We were forced to compromise the case. The captain said it was absolutely impossible for him to remain here all that time. We had to settle the case. Mr. Tunison brought the suit—libel.

Q. Was there any sum of money paid out by the captain of that vessel for a compromise?—A. Yes, sir.

Q. A large sum?—A. Well, large is a relative term. My recollection is he paid \$400. We told him he had a good defense; would not have paid anything if we could have gotten to a judge.

Mr. LITTLEFIELD. Mr. Speaker, will the gentleman allow me a moment?

Mr. CLAYTON. Certainly.

Mr. LITTLEFIELD. If the gentleman will look on page 84 he will find that Judge Liddon was recalled for the purpose of cross-examination and he testified to this same libel, and instead of being brought in July it was actually brought January 25, 1897, and the præcipe was filed February 12, 1897.

Let me call the attention of the gentleman to the significance there, where it shows that Judge Liddon was mistaken in the first instance, and if the gentleman will allow me, if he will examine the abstract showing the places where Judge Swayne was holding court, he will find that practically during that period in 1897, January 25, the judge was holding court elsewhere under instruction of the superior court.

Mr. CLAYTON. Does the gentleman also find that he held court continuously elsewhere from January on to November?

Mr. LITTLEFIELD. No; but the gentleman will find in this instance Judge Liddon complained of that the judge was properly and legally away.

Mr. CLAYTON. Probably properly away for the time being—while holding court—but he is away for months and months at a time.

Mr. LITTLEFIELD. But this particular instance falls to the ground, and that is the reason I call the gentleman's attention to it.

Mr. CLAYTON. I do not think so, because the judge was probably properly away by assignment two or three weeks. That does not show he had the right to stay away three or four months or from January to November.

Mr. LITTLEFIELD. But if he was away and they settled the case during the time he was properly away that could not be charged against his nonresidence.

Mr. CLAYTON. The reason they settled it was he would not come back until November, and that is the reason they complained in January and the suit was brought. Naturally they wanted to try it, but they knew they could not try it until November, because they could not have a special term or special jury without a judge.

Mr. LITTLEFIELD. Now let me call the gentleman's attention——

Mr. CLAYTON. And they were going by his past history, his habitual nonresidence, his staying way. That is the inference I draw.

Mr. LITTLEFIELD. I understand that is the inference, but I am trying to show the gentleman that the inference is contrary to the facts, which do not happen to sustain it.

Mr. CLAYTON. I think they do.

Mr. LITTLEFIELD. On page 84 you will find it appears there was a term of court the following April, and they settled that case before that term; so they did not settle that case because there was no term of court until November.

Mr. GILLET of California. This was in the spring; he was there shortly afterwards.

Mr. CLAYTON. Perhaps that may explain the Liddon incident. As I stated in the beginning, I do not think whether injury occurred or not has anything to do with this case, but injury has occurred in several cases of the other witnesses whose testimony I have read.

Mr. GAINES of Tennessee. Will the gentleman read the testimony, beginning at the bottom of page 596?

Mr. CLAYTON. The gentleman from Tennessee [Mr. Gaines] calls my attention to the bottom of page 596. This is Judge Swayne's testimony.

By Mr. PALMER:

Q. You say you rented the Simmons cottage in October of what year?—A. 1900.

Q. Now, I recollect before that it was testified you occupied the cottage for a few months, and then went north about Christmas time. Is that correct?—A. That is correct.

Q. How many months, in point of fact, did you and your family live in the Simmons cottage?—A. I do not know.

Q. Can you give us any estimate of the number of months you lived in the Simmons cottage?—A. I can not. I know that my son was taken seriously sick, broke down in college from nervous prostration, and I had to hurry home to him.

Q. You mean, when you say "hurry home," to Guyencourt, Del?—A. He was in Wilmington, Del., with his sister; and I went up there to Delaware, where I was born, and spent all the time I could with him, and came back to hold court.

Mr. GAINES of Tennessee How far is Guyencourt from Wilmington?

Mr. CLAYTON. I do not know. Delaware is not a very large State and I do not believe it is a great distance, but I do not recall that the testimony shows how far Guyencourt is from Wilmington.

Mr. GAINES of Tennessee. How do you construe that language?

Mr. CLAYTON. It seems that he claimed Delaware as a residence instead of Florida. Some other witnesses stated that he called Delaware his home; A. C. Blount stated that

Mr. GAINES of Tennessee. It looks to me like he gave here his own construction of where his real home was when he said he had to hurry home to see his sick son in Delaware, and Guyencourt is in Delaware

Mr. CLAYTON. Mr. Speaker, you will find in my remarks on December 13, 1904, the testimony that Judge Swayne first gave contrasted with the testimony that he last gave before the committee, and inasmuch as the gentleman from Maine made criticism of this on yesterday I am very glad, and it is highly to the credit of the gentleman from Maine [Mr. Littlefield], that he corrected or permitted the gentleman from California [Mr. Gillett] in his time to correct the misapprehension that the gentleman from Maine labored under, and on account of which misapprehension he made some strictures upon the subcommittee which took this testimony.

I call attention to this to show that when the gentleman from Maine makes a mistake I believe he will correct it when his attention is invited. On page 807 of the Congressional Record of January 13, you will find this about the testimony not being printed:

Mr. GILLETT of California. Mr. Speaker—

And he said this on Mr. Littlefield's invitation—

all I have to say in relation to this matter is that when the statement of Judge Swayne was taken before the committee and was transcribed, it appeared to be very inaccurate and garbled, so much so that it was the opinion of both myself and Mr. Palmer that it was not a fair statement of his side of the case, and that a fair statement ought to be made and that that statement should not be published. I find that some part of it has been published, and the part that was in Mr. Palmer's report, read by Mr. Littlefield yesterday, was a statement—

And that is the part that I put in my remarks, and upon which he animadverted—

that he made at that time, and the evidence that he gave at that time, and is correctly stated in Mr. Palmer's report, although it was not edited into the record itself.

Now, it was as the gentleman from Pennsylvania [Mr. Palmer] stated, and as the gentleman from Maine [Mr. Littlefield] recognized That was pursuant to an agreement between the gentleman from Pennsylvania [Mr. Palmer], representing the majority, and the gentleman from California [Mr. Gillett], representing himself, the minority. I am glad that statement has been put in the record.

Mr. LITTLEFIELD. If the gentleman will allow me, I do not understand that the gentleman from California [Mr. Gillett] said that he agreed that that testimony should be omitted from the record. I do not know as to that, as he is not present at the moment.

Mr. CLAYTON. I said that the gentleman from Pennsylvania [Mr. Palmer] made the statement.

Mr. LITTLEFIELD. I understood you to say the gentleman from California [Mr. Gillett].

Mr. CLAYTON. The gentleman from Maine [Mr. Littlefield] misapprehended that statement. I was unfortunate in what I said, perhaps.

Mr. LITTLEFIELD. I beg the gentleman's pardon.

Mr. CLAYTON. What I wanted to call attention to was that that part of the testimony which you recited and which was set out in the report of the gentleman from Pennsylvania [Mr. Palmer] was not "emasculated," using the language of the gentleman from Maine [Mr. Littlefield]; that it was not "garbled," again using the language of the gentleman, and that it was not "edited," once more using the language of the gentleman. That is what I mean to say.

Mr. LITTLEFIELD. Let me ask the gentleman from Alabama [Mr. Clayton] this: How does it happen that testimony got into the report and did not get into the record, when the report was printed after the record was printed? I would like to know how that came about. There is a piece of testimony——

Mr. CLAYTON. I have just explained to you. The gentleman from Pennsylvania [Mr. Palmer] has, I think, told you that. I do not care, with the gentleman's pardon, to renew the controversy on that subject. I merely wanted to call attention to it. I thought it had been settled.

Mr. LITTLEFIELD. Very well.

Mr. CLAYTON. With the gentleman's permission, I would like to proceed with my remarks.

Mr. LITTLEFIELD. I will not press it, if the gentleman does not wish to answer.

Mr. CLAYTON. I have answered it, and have told the gentleman from Maine [Mr. Littlefield] what the gentleman from Pennsylvania [Mr. Palmer] said.

Mr. LITTLEFIELD. May I ask a further question in relation to it?

Mr. CLAYTON. Certainly.

Mr. LITTLEFIELD. The question is this: Inasmuch as the report was printed after the record was printed, how does it happen that that testimony appeared in the report and did not appear in the record?

Mr. CLAYTON. As I was informed by the gentleman from Pennsylvania [Mr. Palmer], it was by an agreement between himself and the gentleman from California [Mr. Gillett].

Mr. LITTLEFIELD. That it should be printed in the report and not in the record?

Mr. CLAYTON. No; that is not correct. I do not know why it was left out of the record, but no injury has occurred because it was printed in the report, and it is here in this case in a regular and legitimate way, and is not garbled, edited, or emasculated.

Mr. LITTLEFIELD. I suppose that the gentleman will concede that the context from which that extract is taken will not appear in the record.

Mr. CLAYTON. I do not concede that there is any context at all upon the subject to which this relates. The rest of Judge Swayne's statement made at that time was his argument and not his testimony. All of his testimony on the subject of residence or nonresidence is embraced in this paper. It is all there. I can recollect one thing that was omitted from that statement. I remember that Judge Swayne appeared there and made a statement, an argument, gave testi-



mony—it would be hard to classify his utterance—and that during the course of it he recited some doggerel, rhymes about a dog and a squirrel, and I recollect that an employee of the Committee on the Judiciary attempted to take stenographically all he said, but he failed to take Judge Swayne's doggerel, and that that did not appear in the transcript.

Now, Mr. Speaker, if you mean that his remarks were garbled, emasculated, or edited, in that his rhymes, not to say poetry, did not appear, that is correct. If the fact that this invocation of the muse can not be found in this printed book of the testimony is going to help Judge Swayne or support your criticism, you are welcome to it.

Now, Mr. Speaker, I have consumed more time than I intended, on account of these interruptions, and I trust that I may have no further interruptions, so that I may conclude, as there are other gentlemen who desire to address the House.

Permit me to call attention briefly to what Judge Swayne himself says in regard to the charge of nonresidence.

It will be remembered that St. Augustine, where he claimed to have a residence in 1894, was put by act of Congress in that year in the other district of Florida. In the first testimony given by him he said that he did not remove his furniture nor his family from St. Augustine for the reason that he thought that the succeeding Congress would restore his district back to its original form during the next two years after the boundaries of the northern district were changed.

The gentleman from New York [Mr. Perkins] in his unanswerable argument invited your attention to this statement: For two years Judge Swayne said he did not change his residence, and he avowed that he did not intend to change it, and gave as his reason for not changing his residence into his new district and as his reason that he did not even intend to make such change for these two years were that he thought the district would be legislated back by the next Congress to its original form, and that it would therefore be unnecessary for him to take up his residence in the northern district as then and as now constituted. Again, he said that he told friends at Pensacola that he had concluded not to move his furniture, and it was well understood by the people there. Now, why this conduct and these statements? The reason I have just stated. He gave the reason for this determined noncompliance with the statute—he thought his district would be changed back to its original form and it would be unnecessary for him to take up residence in the changed district. He says in substance that he was there in Pensacola for a considerable period, sometimes early in October and sometimes a little later, and was there all the time he was needed, unless holding court somewhere else.

Then he afterwards said that he spent his summers in Delaware when he was not holding court somewhere else. In July, 1900, he went with his family to Europe, and in 1900 he held court in Birmingham; after that went to Pensacola and rented a house. He went North with his wife and son and spent Christmas, and on January 12 he was at Tyler, Tex. He further asserted that:

After two weeks, perhaps, I returned and held court and finished what I had to do and got back to Delaware some time that summer, and was back in Pensacola in October.

But that was after it was well known that the movement to impeach him had been begun, and not until then did he so much as pretend to have taken up residence in the northern district. Again, to be fair, let me quote him:

I resided in St. Augustine with my family, and, about the time when the bill making the change in the district which has been spoken of received President Cleveland's signature, after a consultation with my friends in Jacksonville and vicinity they urged me not to move my furniture nor my family, saying that the next Congress would be Republican and the district would be placed back in its usual form. My furniture was allowed to remain, and I went at once to Pensacola. I found a leading Democratic friend there, and I stated to him that I had concluded not to move my furniture there, and it was all well understood by the people there. I was there for a considerable period, sometimes early in October and sometimes a little later, and I was there all the time I was needed unless holding court somewhere else. By special assignment for five months I was in the court at Dallas. In 1890, in July, I went with my family to Europe. In the spring in 1900 I was holding court at Birmingham, where I had a great many friends, and after that I went to Pensacola and rented a house.

Mr. GILLET. Was that in 1890?

Judge SWAYNE. That was in 1900. I think I moved there early in October. I then went North with my wife and son to spend Christmas week in Wilmington. On the 12th of the following January I was in Tyler, Tex., and two days later I got a telegram about the breaking down of my son's health, but I stayed on until February and finished the case and then came back, as his condition was very critical and serious, and after a week or two, perhaps, I returned and held court and finished what I had to do and got back to Delaware that spring. In February, 1903, I was again in Tyler, Tex., and went early to Wilmington. In the spring we bought the property that had been formerly occupied by Judge A. C. Blount, in Pensacola, and moved in it the 1st of October.

I never was a registered voter and I have not voted in 14 years. When I left Delaware I moved my domicile, and have taken no part in political questions arising in the State of Delaware or Florida. Mr. Turner, whom Mr. Laney said he did not know, was an attorney for my matters for four years. My father died in 1889 and left property to my mother for life. She is still living, and the property comes to me and my sister as a residuary legatee at the time of her death. But that has never been my home, but I have spent my summers there mostly, arriving sometimes in June and sometimes in July, and from that point I could always reach Pensacola in 36 hours, and the record will show I have always been there to attend to anything of a serious nature.

My recollection is that no one has ever suffered because of my absence, and I can offer testimony which will entirely clear up that proposition. My recollection is that, from the testimony taken, the most the committee has on this point before them is that counsel may have been sometimes inconvenienced in the summer time during my absence on vacation. As near as I can recollect, these are the facts which cover the period since I have been on the bench.

Mr. GILLET. Did the business of the court suffer because of your absence?

Judge SWAYNE. I never heard of it.

Mr. GILLET. The summer time was the time usually taken for vacations?

Judge SWAYNE. Yes; I so understand it. Another suggestion was that the only way to get rid of me would be to do away with the district entirely. But I do not suppose the parties care very much whether the office is abolished or not, just so long as they can get the individual.

But there is this mandatory statute requiring his residence, and here is his evidence, presented by himself, which shows that he did not live up to the statute.

Now, the gentleman from New Jersey [Mr. Parker] in his minority views rather seems to suggest some sort of a statute of limitations in defense of Judge Swayne's nonresidence—because the judge claims now to reside and to have resided since 1903 in his district all his derelictions from 1894 to 1903 should be pardoned by this House. Well, there is no statute of limitations. That is one excuse now offered for his failure to comply with the positive requirement; and the other excuse now interposed for such failure is the allegation that no harm or injury resulted from such failure.

Now, again, as to inconvenience and injury, there is not a lawyer in this House who does not know that in a seaport city like Pensacola, with an admiralty practice and large shipping interests, where the business of the court was held in the northern district of Florida and at Tallahassee, inconvenience and injury were suffered by the parties litigant, the people, and the lawyers in that district. Congress knew that the absence of a judge, that the nonresidence of a judge, from his district would cause inconvenience, annoyance, trouble, and expense to the people having business in that court, to the people who might want to have business in that court, to the lawyers, to the parties at interest, and sometimes to the Government itself having business in the court. Congress knew that the nonresidence of a district judge would create inconvenience, trouble, and annoyance, and probably unnecessary expense; hence they passed this mandatory statute requiring the judge to reside in his district. The statute does not say that he can be excused upon any ground. He must acquire and maintain this residence: not of course that he must stay there every day, but that he must have an actual legal residence, that he must be there at least according to all reasonable demands in that district, so as to be able, ready, and in position to respond to the duties of his office.

It does not meet this positive law to say that since these impeachment proceedings were begun the judge has taken up his residence there. Congress passed the law and it requires residence in the district, and, as if to emphasize this requirement, as I have said, it states that a noncompliance with the statute shall be a high misdemeanor. Perhaps it would have been a high misdemeanor without so stating, but in terms the statute says that it is a high misdemeanor.

I have here a list of witnesses who testified as to his nonresidence: C. H. Laney (pp 8, 9, 10, 11), W. A. D'Alemberte (p. 18), W. A. Blount (pp 19, 20, 21), W. H. Northup (p. 66), A. H. D'Alemberte (pp. 21, 22), T. N. Adams (pp. 50, 51), J. J. Sullivan (p. 38), J. C. Keyser (p 39), J. E. Wolffe (pp 58, 59, 60), Montgomery Marshall (pp 143, 144), E. T. Davis (pp 126, 127, 128), George P. Wentworth (pp 78, 79), B. S. Liddon (pp 22, 23).

I come next to the case of Belden and Davis. The facts in the case of Belden and Davis upon an alleged contempt are different in some minor particulars, as the evidence itself will reveal. The facts are that in February, 1901, Messrs. Paquet and Belden, lawyers, residing at New Orleans, brought ejectment in Judge Swayne's court on behalf of Florida McGuire and others, plaintiffs, against the Pensacola City Company and others, including Messrs. Blount and Fisher, lawyers, for a tract of land sometimes called the "Gabriel Rivas" tract and sometimes called the "Cheveaux" tract. I pronounce that name as if it were spelled B-l-u-n-t. It is the same gentleman who was frequently referred to by the gentleman from Maine [Mr. Littlefield] as B-l-o-u-n-t. He is the lawyer who made the motion for the rule for contempt against Davis and Belden. Blount is a rather common name in some parts of the South. One of the counties in Alabama is named Blount, and it is pronounced as though it were spelled B-l-u-n-t.

Mr. SMITH of Kentucky. Was there not a Congressman of that name?

Mr. CLAYTON. Yes. The first case of impeachment in the United States Senate was that of Senator Blount.

At the spring term of the court, 1901, the case was not ready for trial. Now, Belden says that during the summer of 1902 the rumor was general through the town of Pensacola that Judge Swayne had purchased lot 91 of the Rivas or Cheveaux tract, which was in litigation before him as judge of the circuit court. In his testimony, page 116 of the printed hearings, Belden said that the rumors were so definite and of such form as to leave no doubt in the minds of counsel of the purchase. On October 19, 1901, Belden and Paquet addressed a letter to Judge Swayne requesting him to recuse himself, because he was a party at interest, and to notify Judge Pardee, so that he could assign a disinterested judge at the November term. Judge Swayne made no reply to the letter. On November 5, or during the week—a day or two afterwards perhaps—at the fall term of the court, Judge Swayne announced that a relative of his had purchased the land, and on the following day he said from the bench that the relative he referred to yesterday or the day before was his wife, and that she had paid for it from funds from the estate of her father. Further, in substance, that the bargain for the land had not been consummated for the reason that Edgar had offered a quitclaim deed and not a warranty deed. He never at any stage of the proceedings intimated or insinuated that he declined to recuse himself upon the ground that he had not negotiated for, or that he did not know that block 91 was involved in litigation in his court.

The testimony shows that Watson & Co., Edgar's agents, with whom Judge Swayne negotiated the purchase of lot 91 and another lot, wrote to him at Guyencourt, July 19, 1901, that Edgar refused to give a warranty deed to this block, but gave a quitclaim deed, and that they had recently made an abstract of title to this lot, and that they would just as soon have one deed as the other. On the 21st Judge Swayne replied:

You may omit block 91 and send papers for the others along, and oblige.

Afterwards the agents wrote him:

In reply to yours of the 20th instant, we herewith inclose you new mortgage and note for you and Mrs. Swayne to sign, leaving the amount blank in both mortgage and note.

Neither Belden nor Davis knew of this correspondence between Watson & Co. and Swayne.

In October, 1901, when the letter to Judge Swayne asking him to recuse himself was sent, there was a suit pending in the State court against Edgar for commission on the sale of this block 91 to Judge Swayne. In July, 1901, Edgar's agent had taken Judge Swayne over the tract of land and agreed upon the terms of sale. At this November term, 1901, the criminal business of the court was concluded, about 5 o'clock on Saturday afternoon. Judge Swayne then took up the case of Florida McGuire and declined to recuse himself, and stated that the case would be heard on the following Monday unless legal grounds for postponement could be shown.

Paquet, for the plaintiff, asked that the case be set for trial on the following Thursday, claiming that it was too late to summon witnesses that night and that they could not be summoned on Sunday, and therefore the case could not be ready for trial on Monday. Judge Swayne ruled that the case would go on on Monday. Shortly after this the court adjourned for the day. Neither Belden nor Davis



was present in the court at the time Judge Swayne made any of these statements. Belden was sick and was at his hotel and Davis says he was not there, and the only witness who undertakes to show Davis was there or had any connection with it is Marsh, clerk of the court, who is dependent for his place upon the good wishes of Judge Swayne, and even Marsh does not say so positively. Davis was not an attorney or counsel in the case. His name had not been attached to any pleadings, his name was not on the appearance docket of the court, he was not an attorney of record, and he says he was not an attorney in the case in anywise. Now, it is very strange, if Marsh is right and Davis is wrong—that he was an attorney—that his name was not entered as an attorney in the case, that his name was not signed to any of the pleadings. He states positively that he had no connection with this case up to the time the court adjourned on Saturday. He states that on Sunday morning after that, Paquet telephoned to him that he had a telegram calling him home on account of illness in his family, and remarked upon the fact that Belden was too feeble and ill to go to the courthouse the next day—Monday—and requested Davis to take an order of dismissal for him. This is, in substance, the conversation, and Davis says he told Paquet he would go to the court room next morning—Monday—on account of this request of Paquet, not because he had been an attorney in the case, and take the order of dismissal and that accordingly on Monday, the day the court met, he arose in his place and got an order from Judge Swayne dismissing the case. Now, then, going back to Saturday night, Paquet drew up the papers in this action of ejectment against Judge Swayne in the State court and had the papers all ready before Davis went to Pryor's store, where they were drawn.

The contention was, on the part of Davis and Belden, that they had the right to sue Charles Swayne for lot 91 upon the theory that he had contracted for the land with Edgar, who claimed to own it. Neither Belden nor Davis had been in court and heard Swayne's disclaimer. They knew that a suit had been brought against Edgar for commissions on account of selling the land to Swayne. Belden had heard the rumor, persistent and general in the town, that Judge Swayne had bought lot 91. He was wholly ignorant of Judge Swayne's disclaimer, and so was Davis. If there was any counsel for plaintiffs in the McGuire case who knew of Judge Swayne's disclaimer it was Paquet. Belden says that upon the theory that Judge Swayne had contracted for the land with Edgar and claimed to own it—Edgar had admitted that he was in possession and the contract was existing between them—that the title of the alleged owner could be tried in the State court, Swayne standing in the shoes of Edgar. That is in substance what Belden says. At the time on Saturday night when this suit against Swayne was brought it was agreed that the case of Florida McGuire against the Pensacola City Co., pending in Swayne's court, should be dismissed on Monday morning. Pursuant to such agreement, Monday morning at the opening of the court Davis for the first time appeared in the case and asked for and obtained from Judge Swayne an order dismissing the suit. I have stated about the facts leading up to his appearance in the case on Monday morning. The reason that Davis made the motion was, as I



have said, because Paquet was called home on Sunday and had requested him, over the telephone, to do this.

After the order of dismissal was made—mark you, after dismissal, and not before—W. A. Blount, one of the defendants to the suit which had been dismissed, and who was an attorney in the case—the McGuire case—arose and suggested that Paquet, Belden, and Davis had been guilty of a contempt of the court by bringing the suit in the county court of Escambia County against Charles Swayne. Paquet was the man who drew the papers in the suit against Swayne and was the leading counsel in the McGuire case.

Mr. SMITH of Kentucky. Where did Belden live?

Mr. CLAYTON. In New Orleans, La., and he was an old man of 70 years and was suffering from facial paralysis.

Mr. SMITH of Kentucky. Did Mr. Paquet live there also?

Mr. CLAYTON. Mr. Paquet lived at New Orleans. Previous to this action on the part of Blount he and Judge Swayne had a conference before the court met on Monday. Swayne called Blount up on Sunday over the telephone and asked him if he had seen a statement of an action against him in the State court published in the morning paper, and called Blount's attention to it and they discussed it. Now, as to what conclusion was arrived at can be, perhaps inferred from the testimony. All that they said we do not know; what they may have agreed upon or not have agreed upon we do not know.

In an unsworn statement prepared and presented to him by Blount, Judge Swayne ordered a ruling to show cause to be served on Paquet, Belden, and Davis. Paquet had gone home to New Orleans on Sunday. Davis and Belden appeared and submitted an answer purging themselves of contempt and averring their right to bring the suit against Charles Swayne.

I do not agree with my learned friend from Maine [Mr. Littlefield] that they did not purge themselves. If I understood his argument correctly, his idea is that before a man can purge himself of an offense he must under oath deny the facts. In other words, that one can not in a contempt proceeding admit his conduct as charged and justify upon the ground that it was righteous conduct; that that would not be purging. If he takes that view I dissent. Any judge might cite a lawyer to show cause why he should not be punished for doing a perfectly lawful and proper thing. Would any man say that because the lawyer came in and admitted and asserted his right to do this lawful and proper thing that he had not purged himself?

Mr. LITTLEFIELD. Does the gentleman from Alabama [Mr. Clayton] claim that the purging was done in the answer filed?

Mr. CLAYTON. I hope the gentleman from Maine [Mr. Littlefield] will not interrupt me now, because I desire to finish this statement.

Mr. LITTLEFIELD. Very well; then I will not do so.

Mr. CLAYTON. There was testimony to show that the suit had been brought against Judge Swayne and process had been served on him Saturday night at about 8 o'clock, and that Paquet had written an article which was printed in a newspaper at Pensacola on Sunday. Neither Davis nor Belden wrote that article. After the trial of the contempt case of Belden and Davis, lasting about 30 minutes, Judge Swayne adjudged them guilty. Belden says it was a very short trial—I believe his language was it was a very summary or perfunc-

tory trial, lasting about 30 minutes. Judge Swayne adjudged them guilty of the charge, because he contended that they had violated the dignity and good order of the court and were in contempt thereof. Now, that is the language of the judgment.

Mr. LITTLEFIELD. May I interrupt the gentleman from Alabama [Mr. Clayton]?

Mr. CLAYTON. Yes.

Mr. LITTLEFIELD. I was going to ask the gentleman this: It is a fact, is it not, that neither Belden nor Davis testified?

Mr. CLAYTON. I think that is true.

Mr. LITTLEFIELD. If they were not guilty of the charge, and their answer raised the issue, why did they not testify?

Mr. CLAYTON. They introduced other witnesses.

Mr. LITTLEFIELD. You concede first that their answer was not on oath?

Mr. CLAYTON. Certainly, and neither was the charge.

Mr. LITTLEFIELD. It did not have to be on oath.

Mr. CLAYTON. It did not have to be on oath where the offense was committed in facie curae, but the almost universal practice is, if it is an indirect contempt, to require it under oath.

Mr. LITTLEFIELD. Well, now, then, the Supreme Court of the United States has held that it was not necessary.

Mr. CLAYTON. I know what the Savin case is; I understand that case, but I am talking about the general rule.

Mr. LITTLEFIELD. I ask the gentleman this, inasmuch as this question involved in the declaration of the answer was in relation to the judge's own declaration on the record of the 11th of November, 1901, does not the gentleman think it a fair proposition involving control of the question of fact, that the respondents should have made that answer on oath or by their own testimony, and failing to do that the judge could only have found one way?

Mr. CLAYTON. The gentleman has shown throughout this question that he is a most excellent critic, and if I had been Davis's and Belden's lawyer I should certainly have agreed with the gentleman from Maine. I would have put it in that form; but they did not put it in that form. If I had been Blount I would have had the motion for the rule verified by affidavit. If I had been the judge I would have required that this be done. But it was not. He treated Blount's motion and treated Belden's and Davis's answer as complete.

Mr. GILBERT. Forming an issue.

Mr. CLAYTON. Forming the issue; and evidence was introduced for and against the contention of Belden and Davis in the case.

Mr. LITTLEFIELD. Yes.

Mr. CLAYTON. And he heard it in great haste.

Mr. LITTLEFIELD. If the gentleman will pardon me, the case shows that evidence was introduced in relation to the publication of that notice in the paper made by Paquet and Prior, who was associated as counsel, thus making that part of the statement——

Mr. CLAYTON. I hope the gentleman will not burden my speech.

Mr. LITTLEFIELD. I am not going to interrupt the gentleman without his consent.

Mr. CLAYTON. I want to complete the statement. I was glad to hear you the other day. I am always pleased to listen to you speak. You spoke for something like 4 hours and 35 minutes the other day,

and you certainly ought not to want to make me speak that length of time. If I could speak as well as you, then I would not mind speaking so long.

Mr. LITTLEFIELD. On that basis you are entitled to talk 10 hours.

Mr. CLAYTON. Thank you. Now, I am not going to try this case, with due deference to the gentleman from Maine, upon any fine-spun theory about pleadings. I want to get at the merits of this case of wrongful imprisonment and imposition of fine. I want to get at the facts. Perhaps if I were hair-splitting and refining I could find fault with the judge's judgment. He uses language not used in the statute. He adjudged them guilty of "a substantial contempt of the dignity and good order of this court." Now, the statute does not use such language as that. If I was going to be precise and wanted the pleadings all to conform with the best practice, and wanted judgment to conform to the letter of the law, I would criticize the judge's order of contempt, because the statute of 1831 specifies the cases in which a man may be punished for contempt. The judge finds them guilty of some sort of omnibus charge and does not specify. The first section of the statute of 1831 is embodied in section 725 of the Revised Statutes, in this language:

The said courts shall have the power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance of any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts.

And the second section of the act of 1831 is found in Revised Statutes, section 5399, in the following language:

Every person who corruptly, or by threats or force, endeavors to influence, intimidate, or impede any witness, or officer in any court of the United States, in the discharge of his duty, or corruptly or by threats or force obstructs or impedes, or endeavors to obstruct or impede, the due administration of justice therein, shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than three months, or both.

The leading exposition of section 725 of the Revised Statutes is the case of *Ex parte Robinson* (19 Wall.). There the statute is analyzed and construed. There it is said:

The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power. But the power has been limited and defined by the act of Congress of March 2, 1831. The act, in terms, applies to all courts; whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may perhaps be a matter of doubt. But that it applies to the circuit and district courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction. The act of 1831 is, therefore, to them the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the power of these courts in this respect to three classes of cases: First, where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice; second, where there has been misbehavior of any officer of the courts in his official transactions; and, third, where there has been disobedience or resistance by any officer, party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command

of the courts. As thus seen the powers of these courts in the punishments of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgments, and processes.

In *Rapalje on Contempts*, page 14, it is said:

The tendency of legislation in this country, however, has been to narrow the definition of the offense, diminish the class of persons to whom it can be imputed, and restrict the power over it of the courts, especially by limiting their power to fine and imprison.

This statute defined the authority of the district and circuit courts, but Judge Swayne did not follow that statute, and I do not see where under that statute he could have found in this case that Davis or Belden was guilty of any contempt of the court, as I shall undertake to show further along.

In sentencing Belden and Davis Judge Swayne used very harsh language.

In passing judgment upon Judge Swayne in the matter of the punishment of Belden and Davis it is our duty to consider the law under which it is asserted he acted and the facts antecedent to and existing at the time of his pronouncement. It is also our duty to consider his manner and language used at the time he sentenced the alleged offenders. By this we can better judge of the reasons, the motives of Judge Swayne, and whether his conduct was a misbehavior in office. If he convicted and sentenced these men merely because of some personal grievance, real or imaginary, or because of some pique or feeling of spite, then he was guilty of seriously wrong conduct. He did use harsh language, and this tends to show his reason and motive for finding them guilty. The testimony of Davis and Belden on this point is, in effect, uncontradicted.

Davis said (page 124 of testimony):

E. T. Davis, witness for the complainant.

Direct examination by Judge LIDDON:

Q. What is your name?—A. E. T. Davis.

Q. Your residence?—A. Pensacola.

Q. What is your profession?—A. I am a lawyer.

Q. How long have you resided here?—A. I have been here about three and a half years—I think it is about that long.

Q. Now, you have heard of the case of *Florida McGuire v. Blount, Fisher, et al.*—one of these cases was discontinued, according to the testimony—did you have any connection with it?—A. The one that was discontinued I had no connection with except to dismiss the case Monday morning.

Q. When was the first time you were spoken to and retained in that case?—A. On Sunday, I believe it was. On Saturday I was called over to Mr. Pryor's store; Judge Paquet told me he wanted to associate me with him in a case against Charles Swayne in the State court; they employed me in that case. The other case I had no connection with until Monday morning; on Sunday Judge Paquet telephoned for me to come down, showed me a telegram he had received from some of his family in New Orleans; some one was ill, and Gen. Belden was very feeble, could hardly talk; he wanted me to present the motion. I had it signed by the judge and filed by the clerk.

Q. You say Judge Paquet was called away?—A. Yes.

Q. He was out of town?—A. Yes.

Q. Now, in what capacity were you in that case, as a courtesy to Judge Paquet?—A. Yes, sir.

Q. You filed the motion to discontinue?—A. Yes, sir.

Q. That was your first and only connection with that case?—A. Yes.

Q. Then you were connected with the case in the State court?—A. Yes. They afterwards employed me in the suit which was tried in association with Judge Paquet and Gen. Belden.

Q. Now, speaking of these contempt proceedings, you had been employed in an ejectment suit or in the United States court before that time?—A. No, sir; I had not been employed.

Q. All the service you had rendered was to discontinue the case as a courtesy to Judge Paquet?—A. Yes.

Q. Now, you have seen the record of this contempt proceeding?—A. Yes. Immediately upon my filing the motion, the court stated to Mr. Blount, who was sitting there on that side; he said the case is withdrawn. Mr. Blount immediately raised up and made a motion to punish the counsel for contempt; upon his motion the court appointed him and Mr. Fisher to prepare the motion. I believe he said it should be in writing. The rule was served next morning, to show cause why we should not be punished for contempt. We filed our answer; there was some testimony. He sentenced us to pay a fine of \$100, be imprisoned for 10 days in the county jail, and two years disbarment. Mr. Blount stepped up to the bench and said something; I understood him to say he could not disbar in a proceeding of this kind. After that the penalty of disbarment was withdrawn and we were taken to prison.

Q. You were imprisoned?—A. Yes; I got Mr. Tunison to represent us in the matter of habeas corpus. He took it up before Judge Pardee. At that time we had some discussion of the jurisdiction of Judge Pardee, and Mr. Tunison said he had looked the matter up, and would carry it through all right. Judge Pardee allowed us to give bond. The case was set for hearing in New Orleans, I think, about two weeks afterwards. We went down there for the hearing. After the hearing Judge Pardee withheld his decision. Later on, he rendered his decision, saying he had no jurisdiction, but as Judge Swayne had exceeded his jurisdiction, he would leave it to our preference, to serve out the time in jail or pay the fine. To get the matter straight, I went down and paid my fine and Gen. Belden served his term of imprisonment.

Q. You? He was actually imprisoned?—A. Yes.

Q. How long?—A. Three days.

Q. What service did you say was rendered by Mr. Tunison?—A. Yes; he represented us as counsel.

Q. Was that before the penalty was imposed or afterwards?—A. Afterwards.

Q. Who represented you in the habeas corpus proceedings?—A. Mr. Tunison. He obtained the writ.

Q. Then what happened?—A. A few days after Mr. Tunison came back I found a letter on my desk stating that he had abandoned the suit. I took the letter to him; asked him what it meant. He said he understood there was going to be some black linen washed over this thing. He said, "Judge Swayne is a friend of mine; I won't go back on him for anything."

Q. Did he return you the fee?—A. No, sir.

Q. You had paid the fee?—A. Yes; I had paid him \$100.

Q. He refused to represent you and did not give you back your money?—A. No, sir.

Q. At the time of imposing this sentence, what was Judge Swayne's manner?—A. Very abusive.

Q. Can you state what he said?—A. I don't know that I can state it in so many words. He called us ignorant; said our action was a stench in the nostrils of the people; and a good many other things I can not repeat.

Q. His manner was very harsh and abusive?—A. Extremely so.

Q. Do you know whether Judge Belden paid Mr. Tunison anything?—A. It was paid together. I paid Mr. Tunison \$50, and I afterwards gave him a check for \$50. On his return I paid him \$50.

Q. What was the specific contempt he said you were guilty of?—A. He said, "You have as much right to sue me as anybody else. It is not the fact of your suing me, but the manner in which it was brought."

Q. He did not claim contempt in open court?—A. Not a bit. The suit was brought in the State court. The answer was, he had no jurisdiction in the State court.

Q. Did he claim that it hindered in any way the ends of justice?—A. He did not claim that from the bench.

Q. Did he claim that there was any misbehavior of you or Judge Belden in the presence of the court?—A. No, sir.

Q. Nor near thereto—obstructing the administration of justice?—A. No.

Q. You say he did not object to being sued; but it was the method in which you did it?—A. He made that statement from the bench.

Q. Did you make any reference to the suit in the State court at the time you discontinued the other suit?—A. No.

Q. Then these contempt proceedings were begun after the case in the Federal court was discontinued?—A. Yes; immediately after.

Q. Did you make it known to the judge that you had no connection with the suit in this court?—A. Yes.

Q. On what theory did he punish you?—A. I can't say what theory.

Q. You are curious to find out, I presume?—A. Yes.



Belden said (p. 115 of testimony):

Q. What is your name?—A. Simeon Belden.

Q. Where do you live?—A. In the State of Louisiana, city of New Orleans.

Q. What is your business or profession?—A. Attorney at law.

Q. Now, you have lived in New Orleans how long?—A. I am a native of Louisiana; resided in the city of New Orleans 35 years.

Q. Have you ever held any official position in the State of Louisiana?—A. Well, one or two only.

Q. What are they?—A. I was a member of the house of representatives there. After that I was attorney general of the State.

Q. What are you in politics?—A. I am a Republican politically. Always have been ever since we have had a party in our State.

Q. In the State of Louisiana?—A. Yes.

Q. Back to what year?—A. Before the death of Mr. Lincoln.

Q. Have you had any business in Judge Swayne's court here?—A. Yes; I have had off and on here, at long intervals, for the last 18 years, business in the United States circuit and district courts here.

Q. Were you connected with the case of Florida McGuire v. Blount, Fisher, et al.?—A. I was employed to assist Judge Paquet—Louis Paquet—an attorney from New Orleans.

Q. You were employed to assist him?—A. Yes; he being an heir to the Gabriel de Rivas tract of land in the eastern portion of this corporation, Judge Paquet brought suit in equity; then we brought the suit referred to; it developed it should have been a suit at common law; we then instituted suit in ejectment.

Q. Were you present in court at the time Mr. Marsh has testified about, when Judge Swayne called the case?—A. Yes.

Q. At what time of day was it called?—A. At 5, or perhaps a little later, Saturday afternoon.

Q. State what occurred then.—A. Well, it was the close, at that moment, of the criminal term of court, and he had supposed at least a day would be fixed for the trial of the civil suit, by which we could have time to subpoena our witnesses, but objection was made to the continuance longer than the following Monday morning. Sunday intervened, which left us without an opportunity of securing our witnesses, and we had to discontinue the case.

Q. How many witnesses were there?—A. Forty or 50.

Q. Upon what ground did the court refuse to set it for any certain day?—A. No; we wanted to set the case for the Thursday following, to have time to get our witnesses and evidence before the court, but he declined, and ordered us to be prepared on the following Monday morning at 10 o'clock. Sunday intervening, forced us to discontinue the case in order to avoid a defeat.

Q. Do you know anything about Judge Swayne or his family becoming interested in the lands involved in this litigation?—A. Why, yes; the Florida McGuire case against Blount et al. was instituted early in the year but was not ready for trial at the spring term. During the summer of 1902 the rumor was general through the town that Judge Swayne had purchased lot 91.

Q. Lot or block?—A. Well it is a block—some call it a lot—block 91 of the De Rivas tract, which was in litigation before him as judge of the circuit court here. The rumors were so definite and of such form as to leave no doubt in the minds of counsel of the purchase. So, the 19th day of October, Judge Paquet and myself addressed a letter to Judge Swayne requesting him to recuse himself, for the reason I have just stated, being a party at interest; to recuse himself and notify Judge Pardee, so he could assign a disinterested judge at the November term. He never replied to the letter at all, and so far as I know never informed Judge Pardee, the circuit judge, of the circumstances surrounding himself and the case. The November term I was sick—had an attack of facial paralysis—but our clients telegraphed me to come over, though I could not appear before the court. Later, on the 9th or 11th, he replied to our communication, in which he declined to recuse himself, and went on to state he had not purchased the land, that a relative of his had purchased the block of ground in question, and that he had got hold of the deed and returned the deed to the vendor of the deed. The vendor of the deed was C. H. Edgar, a party defendant in the suit in question, and he being a party defendant made Judge Swayne a party defendant through him, as we supposed. He stated that the deed had been sent on to this relative at Guyencourt, and he returned it, as he had no interest whatever. The following day, without any reference to the case whatever, the judge called up this, and in his statement he said: "The relative I referred to yesterday, or the day before, is my wife." He went on to say that his wife had paid for it from funds from the estate of her father in Delaware.

Q. He said she had paid for it with these funds?—A. Yes; that is my recollection. It was so positive that she had purchased it, and we also learned that a suit had been brought by Watson & Co. v. Edgar for commissions due them by Edgar; the records will show it. Now, upon that we brought suit against Judge Charles Swayne; the first thing we did in the morning, before any business was transacted, was to discontinue the suit. In the meantime Judge Paquet had prepared the pleadings to eject him from that property. We sued him as Charles Swayne, but I was brought up here for contempt.

Q. Did you file your answer—purge yourself?—A. Yes; there were three of us—Paquet, Davis, and myself; we were condemned to pay a fine of a hundred dollars, ten days in the county jail, and disbarred from practicing for two years in this district.

Q. Were you sentenced?—A. Yes. Mr. Blount told him he could not impose the sentence of disbarment—that was withdrawn. That left the sentence of fine of \$100 and ten days' imprisonment. From that I took habeas corpus. Mr. Tunison took it to Judge Pardee, and he decided that he had no jurisdiction in the matter except in so far as Judge Swayne had exceeded his authority as judge; that he could not impose imprisonment and fine both, so Judge Pardee left it discretionary with us as to whether we paid the fine or were imprisoned, having no jurisdiction in that. So there being no relief, I, in my paralyzed condition, served out my time in the county jail.

Q. You said you filed answer purging yourself of contempt?—A. Oh, no; I knew I had committed no offense, and I did not apologize. I would have stayed in jail until now before I would have apologized.

Q. How old are you?—A. Seventy—nearly 71 years old.

Q. When was that?—A. In December, as I recollect.

Q. In what year?—A. 1901 or 1902—the record will show the date.

Q. Did you protest against the jurisdiction of Judge Swayne?—A. We had thought so; that was my opinion; I was sick at the time; I thought he should have been sued, he taking the place of Edgar, who was a defendant in the suit, but I think it was generally understood that it was doubtful if we could get justice for the heirs. First, we brought it to see if he had bought the property, to proceed to find conclusion and ascertain the title. But these contempt proceedings he instituted—we could not proceed without going to jail.

Q. The sentence penalty was \$100, ten days in the county jail, and two years' suspension from the practice in court here?—A. Yes; the suspension from practice was revoked.

Q. Do you know why?—A. I understood that it was suggested by counsel here that he had transcended his authority.

Q. Now, I will ask you what was the manner of Judge Swayne when he was inflicting this penalty?—A. Well, it was gross and offensive; he entered into a slanderous attack on the attorneys.

Q. Very slanderous?—A. Yes.

Q. Tell what he said?—A. I don't recollect his words exactly; it was published in the newspapers here.

Q. It was harsh and offensive?—A. Very, indeed.

And if it were proper for us to consider the matters de hors the record or outside of the testimony brought here by the committee, I think the newspaper accounts of the conviction of Belden and Davis by Judge Swayne, which accounts were read by the gentleman from Maine [Mr. Littlefield] during this debate, corroborate Davis and Belden in the statement that Judge Swayne did use very harsh and insulting language. No man can read these newspaper articles and conclude that the judge, in sentencing these lawyers, used rhetorical boquets or flowers. He used such language and manner toward them as was wholly unnecessary—harsh, offensive, and vindictive—such language as no man in his private place would undertake to use toward any brave man, such as is my friend from Maryland [Mr. Wachter], who pays me the compliment of listening to my remarks. It is true that Judge Swayne says that the language was not unnecessarily harsh.

Q. You used no harsh language in imprisoning them?

Judge Swayne says:

A. I say I used no unnecessarily harsh language. I think I spoke to them as they deserved to be spoken to by a judge speaking to lawyers under those circumstances. I can not recall my words.

Q. You say it was not unnecessarily harsh?—A. I say not unnecessarily harsh.

Well, let us say reverently God forbid that we should know what sort of language Judge Swayne thinks unnecessarily harsh, if he thought that this was not unnecessarily harsh.

Although it might have been too harsh, I generally speak to a prisoner when I sentence him as I think he deserves. It must be at all times very unpleasant for the prisoner, there is no question about that. But that is not the fault of the court.

I should like to have the gentleman from Maine [Mr. Littlefield] interrupt me now, because he is my biblical authority. I believe it is said somewhere in the Scriptures that "out of the abundance of the heart the mouth speaketh." Now, if I am in error in that quotation, I will thank our theologian to correct me. [Laughter.]

Mr. LITTLEFIELD. If the gentleman will give me the page of the Concordance that he found it on, I will look it up.

Mr. PALMER. You had better look at your own concordance.

Mr. CLAYTON. And then there is another quotation that "the tree is known by his fruit." [Laughter.] I know that is right, because I once quoted it to a distinguished divine and he said: "You are wrong; you used the masculine gender." I said, "I am not wrong." And I went and got my Bible and looked it up, and it says, "the tree is known by his fruit." You laughed too soon over there. You ought to study the Bible a little more and laugh less. Imitate my brother from Maine [Mr. Littlefield] and my brother from Missouri [Mr. Clark] and study the Bible more and laugh advisedly. There is more wisdom in it than can be found in any other book.

I cite as my law in this case the decisions that I have read, the Statutes and Constitution of the United States, and the wisdom of the Bible, and assert that all combine to support the contention that Charles Swayne is not a just and upright judge.

There is another quotation: "When the wicked rule, the people mourn."

The people of Florida have mourned while this man has ruled all these years. They have mourned and forborne until patience ceased to be a virtue, and they have come to you, gentlemen, knowing your political complexion and knowing the political complexion of the Senate, conscious of the fact that the great House of Representatives would bury out of sight the despicable suggestion of partisanship and would vote upon this question according to the law and the facts. They did it knowing that should this case go to the Senate as a high court of impeachment that august tribunal would do justice to itself and to all concerned and would pass upon this case according to its facts and merits, not upon newspaper articles, not upon suggestions made outside, but in the light of the law and the evidence given. The majority here bring you sworn testimony. They have examined it and weighed it. They bring it and ask you to predicate these impeachment charges upon that and not upon newspaper suggestions, and they are confident that you will be guided by the testimony and not by any extraneous suggestions or matters.

Now, for the benefit of some of our brethren who are not lawyers—I have tried to be one for some years myself—I want to make a brief

suggestion about the habeas corpus case that went before Judge Pardee. That went off purely upon the question of jurisdiction. Whatever the court may have said in the opinion which has been read to you, other than as to the mere question of jurisdiction, had nothing to do with the decision and was mere dicta. They did not undertake to go into the merits of the controversy. It is an anomaly under our free institutions in this country that there is one sort, contempt, of a case in one tribunal, the judicial, and only one sort of a case and in only one sort of a tribunal where there is no power to review on the merits the conduct of the man making the decision. That is in a direct and what is called a "criminal contempt" proceeding before a United States judge, where jurisdiction is conceded. The courts will not go into the merits of it. If they find that the court below had jurisdiction according to the facts and the subject matter involved, and did not exceed his jurisdiction, they will not disturb the findings on the facts. The poor miscreant who suffers by the unjust judgment of a malevolent or vicious judge can never have the merits of his case looked into. The answer is that it is a contempt proceeding, *sui generis*, and the appellate court will not inquire into it. They say simply that the judge had jurisdiction, acted within it, and that he found the facts against the prisoner, and the facts, if true, as the court below found them, which is assumed, show a contempt, and we will not review the case further.

Let me quote Rapalje on Contempts (p. 198):

Every superior court of record being at common law the sole judge of contempts against its authority and dignity, it naturally results that the judgment of every such court in cases of contempt is at common law final and conclusive and not reviewable by any other tribunal (which in other cases would lawfully exercise appellate jurisdiction), either on writ of error or appeal, unless specially authorized by statute. Nor can such decisions be reviewed upon certiorari, except in a few States where, upon this writ, the question of jurisdiction may be looked into; which question, however, is most frequently and more properly raised by means of the writ of habeas corpus.

In *Hunter v. State* there is a dictum to the effect that where one is injured by such judgment his modes of redress are (1) by habeas corpus, in which a void commitment for contempt will be disregarded and the party discharged from custody; (2) by impeachment of the judges wrongfully exercising the power; (3) perhaps by civil suit against those inflicting the wrong.

In California it has been held that an appeal will lie from an order putting a party in contempt. But as a general rule an interlocutory order in these proceedings is not appealable, such an order being merely intended to bring the party before the court. In Connecticut an adjudication of contempt by a court of competent jurisdiction, where the proceeding is according to the common law practice, is final, and can not be reviewed by a court of error. But when the question of contempt is tried upon an issue of law tendered by the party moving in the proceeding, and decided upon such an issue, the decision must be regarded as a judgment upon which a writ of error may be brought. In Maine a review may be had upon exceptions. In Michigan an appeal will lie from an order punishing a party for a contempt for violating an injunction; for such an order is final. In Minnesota it is held that fraud of the defendant in disposing of a trust fund can not be reached and punished by proceedings for contempt in not obeying the order to pay it over to the receiver. Such proceedings can only extend to punishing the defendant for contumaciously refusing to obey the order. Therefore an appeal lies from an order committing the defendant for such contempt.

In Nebraska a judgment for contempt may be reviewed on error in the supreme court in the same manner as in criminal cases. In New York and several other States final orders punishing a party in remedial proceedings for contempt, e. g., orders imposing a fine in the nature of an indemnity to a party suffering injury by reason of the alleged contempt, are appealable. And in several States final orders or judgments in proceedings for criminal contempts are also appealable. In New York an order of the general term of the supreme court reversing an order of the special term,



which adjudged a person guilty of criminal contempt of court in obstructing the execution of a warrant for arrest on a charge of crime, is not reviewable by the court of appeals. Otherwise, of an order adjudging a person guilty of criminal contempt in violating an order granted in a civil action, as it is a civil special proceeding within Code of Civil Procedure, sections 1356, 1357. Where proceedings have been commenced after September 1, 1880, to punish for contempt in not complying with a surrogate's decree made before September 1, 1880, requiring the payment of a sum of money, such proceedings, not being a continuance of the original proceedings, are subject to review on appeal. In North Carolina, where a judge of the superior court orders the costs in a case to be taxed against the counsel as a punishment for contempt for negligence occurring in another court at a previous time an appeal lies. And where, at the instance of a party litigant, judgment of imprisonment is rendered against the adverse party for a contempt in wilfully disobeying an order of court, the party aggrieved is entitled to an appeal. In Tennessee the supreme court is declared to have jurisdiction to revise the action of the chancery court in cases of contempt for violation of orders and process of the latter tribunal. In Virginia it is held that a judgment of a court imposing a fine upon an attorney for aiding his client in obstructing the execution of a decree of such court is appealable. But it is also held in that State that a contempt of court is in the nature of a criminal offense, and the proceeding for its punishment is in the nature of a criminal proceeding. The judgment in such a proceeding can be reviewed by a superior tribunal only by writ of error, and not always in that way.

And further, note this:

The Supreme Court of the United States have decided that proceeding in the court below for contempt of court is not reviewable on appeal or writ of error. (*Hayes v. Fisher*, 12 Otto, U. S., 121; *Ex parte Kearney*, 7 Wheat., U. S., 38; *New Orleans v. Steamship Co.*, 20 Wall., U. S., 387.)

What is the remedy? It is impeachment where the judge knowingly and unlawfully adjudges a person guilty of a contempt of court and in such wrongful case imposes fine and imprisonment. The object is to remove the judge who would be guilty of such conduct, so that he may not offend again and so that the punishment in his case may be an example to deter others from a like offending.

Now, on the habeas corpus proceedings by Belden and by Davis the sentence imposed by Judge Swayne was modified to the extent that they were allowed to take punishment in the alternative, the statute being in the alternative. It is strange that Judge Swayne and Mr. Blount should have been so hasty in taking away the personal liberty of these men and rushing them into jail that they seem not to have stopped to read the statute of 1831. They seemed not to have stopped to consider what the Supreme Court has uniformly held from the Robinson case down. They seem not to have proceeded orderly, properly, legally, understandingly, but they seem to have proceeded harshly, hastily, and vindictively; they were both doubtless boiling with indignation.

Blount says that the case had been tried 11 times before, and I take it that Blount had become irritated over it, and Judge Swayne seems to have angered. They acted hastily and without due consideration and deprived these men of their liberty unjustly. A sentence was pronounced which was not authorized by law—two years' disbarment. Why, any man that had looked at the statute—any tyro—would have said that not only was disbarment not authorized, but that fine and imprisonment both could not be imposed. Blount, apparently without having scrutinized the statute, suggested that the disbarment was without authority in such proceedings. If he had examined the statute, or if the judge had done so, the lack of power to inflict the double punishment—fine and imprisonment—would have been manifest. But the statute was not examined. The



judge seemed to have been ignorantly or knowingly willing to trample the law and the rights of these defendants under foot.

A judge not only ought to be the personification of integrity, of honor, of uprightness, but he ought to be an example of calmness, of patience; a man exhibiting a love of justice. He should be such a man, when he comes to try the rights of his fellow men, as to be without passion, without emotion, without irritation. He ought to try the accused as if it was the law that had been offended, not he himself, not a mere personal grievance to be considered, but an offense against the majesty of the law. He ought to carry the idea in his mind that is embraced when we typify justice as a blind goddess holding the scales, blind to extraneous matters, blind to all improper things, and holding a steady hand, unswerved by the vibrations of human passion, so that justice may be administered according to his best judgment, uninfluenced by malevolence. [Applause.]

Now, I have stated the connection of Belden and David with this matter. I want now to refer briefly to the statute of 1831. We have heard it stated here during the debate as to the origin of this statute. At the conclusion of Judge Peck's trial in 1831 the old statute was deemed not satisfactory by Congress, and a bill was framed and introduced, I believe, by Mr. Draper, but reported by Mr. Buchanan, and it is published in the bound volume of the Peck trial. This act is embodied in sections 725 and 5399 of the Revised Statutes. This is the original act:

SEC. 1. That the power of the several courts of the United States to issue attachments and inflict summary punishment for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in the official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts.

SEC. 2. That if any person or persons shall corruptly, or by threats or force, endeavor to influence, intimidate, or impede any juror, witness, or officer, in any court of the United States, in the discharge of his duty, or shall, corruptly, or by threats or force, obstruct, or impede, or endeavor to obstruct or impede the due administration of justice therein, every person or persons, so offending, shall be liable to prosecution therefor, by indictment, and shall, on conviction thereof, be punished by fine not exceeding five hundred dollars or by imprisonment not exceeding three months, or both, according to the nature and aggravation of the offense.

It was to meet wrongs that had been done in the Peck case; it was to abridge the power of judges in the matter of contempts. It defines and limits the power of the United States circuit and district courts to punish for contempt. It had been contended, as in the Peck case, before the passage of this act that these courts had the almost unlimited power of the English or State courts in contempts. Therefore this restrictive statute was enacted.

The Supreme Court, in *Ex parte Robinson* (19 Wall.), says that it limits the power of the judges and that Congress had the right to impose this restriction on the circuit and district courts, but leaves it a query as to whether Congress could so limit the power of the Supreme Court of the United States, that having been created by the Constitution, the other courts having been created by Congress.

That is upon the theory that what Congress had created could be regulated and controlled by Congress, but that the Supreme Court, being of equal constitutional rank with Congress, created by the

Constitution just as Congress was, can not have its authority abridged by Congress. But I will not stop to discuss this query, as it has nothing to do with this case.

Now, section 1 of this act of 1831 is found in the Revised Statutes (sec. 725), as follows:

SEC. 725. The said courts shall have power to impose and administer all necessary oaths and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts.

Now, take the case of Davis. Of what particular act or offense was he held guilty? In a habeas corpus proceeding and elsewhere, the testimony shows, Judge Swayne held that Davis had been guilty of contempt of court on account of some act committed by Davis in his official capacity as an attorney of the court. Let me repeat that. The contention was that Davis was guilty of contempt of court because he had violated his official duty as attorney toward the court in an official transaction. Now, let us see. He had not been an attorney of record in the Florida McGuire case. He had not been in court when Judge Swayne made his disclaimer. He had no connection with the Florida McGuire suit at all, except to dismiss it on Monday morning. He had no official conduct as an attorney in Judge Swayne's court in regard to this case, except in one particular, and that is to take a respectful order of dismissal. That is all that Davis had to do with this case. That is the only thing as an attorney that he did in the Florida McGuire case or in Swayne's court or in any case or matter therein. Then, in his official transactions as an attorney of Judge Swayne's court, tell me where and how and when he was guilty of any official misconduct. It will not do to defend Judge Swayne on the plea of offended dignity. It will not do to defend him upon the idea that a newspaper publication had been made. Judge Swayne dared not predicate his decision in this case upon the idea that the press had no right to publish the account or story that gave him umbrage. Doubtless he knew the error of Judge Peck in a similar instance. Besides, what Davis may or may not have printed in a newspaper—and the evidence shows that Paquet wrote that and not Davis—it was not done in his capacity as an attorney. That was not a misbehavior of an officer in an official transaction. It was unofficial. It was not in his capacity as an attorney of Judge Swayne's court.

How can it be said that Davis's conduct made him guilty of any wrongdoing in his official capacity in Judge Swayne's court? Judge Swayne said in his statement that they had a right to sue him. Of course they had a right to sue him, but he objected to the manner of suing him. Now, I desire to submit this proposition to any lawyer: If Davis had the right to bring that suit, how could he commit a wrong in bringing it at the nighttime or at the noonday? If he had the right to institute that suit, how does the fact that he brought it at 8 o'clock at night—and the testimony shows that Paquet prepared all the papers—alter the case? Suppose he had the right to bring the suit, as Judge Swayne said he had, and that he had waited until

Monday, would it have been wrong? Or if he had brought it in the noonday of Saturday, would it have been wrong?

No, gentlemen; the fact is that Judge Swayne's bosom was filled with unjudicial feelings and wrath on Monday morning on account of that publication. He dared not punish them for the newspaper publication. He knew he could not uphold that. He knew he would be on dangerous ground, so he adjudged them guilty in general and unspecified terms of contempt of court. What did Davis do that was a contempt of court? It did not consist in his bringing the suit. It could not have been in printing the newspaper article, because Judge Swayne did not predicate his judgment upon that. Then, tell me where and how in his official capacity Mr. Davis was guilty of contempt of court. He brought the suit in a State court. The publication was in a newspaper and written by Paquet.

Let me quote again from the statute:

That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions, etc.

It was not done in the presence of the court. It was not done so near thereto as to obstruct the administration of justice. Mr. Blount, Judge Swayne's friend, in his testimony says that the bringing of the suit would not have hindered Judge Swayne from trying the McGuire case. It could not have obstructed him. But it was some sort of indignity, more imaginary than real, that actuated the judge. Now, let us examine a little more into that matter. How did Davis, in his official transactions as an attorney of Judge Swayne's court, commit an offense? Let me refer again to the statute:

That the power of the several courts of the United States \* \* \* shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts \* \* \* in their official transactions, etc.

Now, that means the official transactions of a receiver in a case, of a master in a case, of a clerk in his business as clerk, of an attorney in his conduct in some case in a court, and misbehavior by the marshal, etc. I am not now considering that part of the section which refers to the misbehavior in the presence of the court, for there is no contention here that it was in the presence, actual or constructive, of the court, and it was not so near thereto as to obstruct the administration of justice, but that it was the misbehavior of an attorney in his official capacity in that court. Tell us where, when, and how that occurred.

Mr. Speaker, I had intended to say something about the O'Neal contempt case. That is the other question involved in this matter. But I have already consumed more time than I intended to take and I shall therefore have to leave that part of the subject for others to discuss, contenting myself with saying that if O'Neal was liable to any punishment by Judge Swayne's court he was liable by indictment under the second section of the act of 1831, embodied in section 5399 of the Revised Statutes, being the second section of the act of 1831 and intended to cover such cases. I have read it in your hearing. And that if O'Neal committed any offense he could have been tried under an indictment and not otherwise.

And I want to say right here and now to this House that if the gentleman from Maine has been zealous, or if I have been zealous, that zeal comes from the fact that we entertain certain convictions as to what should be done in this case. It does not come from any spirit or desire on the part of either to appear as an advocate on either side of this controversy. We want justice done. Your committee, whom you instructed to bring in articles after you had voted with practical unanimity to order impeachment of this judge, has brought in these charges and the evidence to sustain these charges, and your committee is of opinion that if these articles are adopted by this House that relevant evidence can be introduced under them, and that the true character and picture and representation of Judge Swayne and his misbehavior in office can be presented to the Senate. They can judge him as he was and as he is. That is the only power that can judge of him. The people judge us by what we do and say.

Let the Senate take this record, let the Senate hear all the testimony—because the case will be tried *de novo*—let them examine the witnesses, and let them pass upon it. We have brought here charges which we think can be sustained. We have offered evidence which we think warrants that conclusion, and I ask this House to exercise its impartial judgment, listening to the appeal of no man. I would not be vain enough to suggest that any Member of this House would upon any feeble persuasion of mine cast any vote contrary to his convictions. The gentleman from Maine was careful to disclaim that he would advise any man how he should vote on these articles. I am not vain enough to imagine I could advise any man how he should vote. I trust, gentlemen, the rest of this debate may be continued on the high plane upon which it has been pitched, and that this House and the Senate of the United States may reach a just and fair conclusion. [Applause.]

Mr. PALMER. Mr. Speaker, how does the time stand now?

The SPEAKER *pro tempore* (Mr. Powers of Maine). The Chair will give it to the gentleman from Pennsylvania in a moment. Seven hours and eight minutes have been consumed by your side, and upon the other side, 6 hours and 45 minutes. You have consumed 23 minutes more than the other side.

Mr. PALMER. Will the gentleman from California use some of his time now.

Mr. LITTLEFIELD. The gentleman from California is out, but he told me the understanding was you were to use time enough to even up.

Mr. PALMER. We have evened up and more too.

Mr. LITTLEFIELD. I do not know how that may be. I think that he had a misapprehension about it, because I got the impression from him that you were to occupy perhaps all of the afternoon.

Mr. GROSVENOR. The gentleman from California told me the gentleman from Texas [Mr. Henry] would go on.

Mr. HENRY of Texas. I suggest that Mr. Gillett is coming; he was up in the gallery, and he is coming now.

The SPEAKER *pro tempore*. The Chair would say to the gentleman from Pennsylvania that upon going over the time again the Chair has been informed that the majority has been charged with 1 hour too much; that the amount the majority has consumed is 6

hours and 8 minutes and the other side 6 hours and 45 minutes, so that the majority has 38 minutes more.

Mr. LITTLEFIELD. That the majority has 38 minutes more?

The SPEAKER pro tempore. That the minority has consumed 38 minutes more.

Mr. PALMER. I now yield to the gentleman from Georgia [Mr. Brantley] one hour.

Mr. BRANTLEY. Mr. Speaker, I ask the indulgence of the House while, as briefly as I can, I present some of the legal phases of this case as they occur to me. I feel, Mr. Speaker, although I am perfectly willing to concede that I may be mistaken in it, that as a member of the committee having in charge this matter, and having devoted some time and given some thought and consideration to it, I should make to the House my contribution, however small it may be, to this discussion. I shall not attempt to discuss this case in its entirety—my time is too limited to do that. I shall not attempt to go into detail as to all the various specifications, but I wish to state in the outset that I indorse the report of the majority of the committee. I believe that Judge Swayne should be impeached upon each and every specification set forth by the majority of the committee.

As I understand the situation, the House on December 13 last passed this resolution:

*Resolved*, That Charles Swayne, judge of the district court in and for the northern district of Florida, be impeached of high crimes and misdemeanors.

The Senate was notified of this action and a committee was appointed to prepare articles of impeachment, so that all that remains to be done by the House is to agree upon these articles. Shall we present to the Senate in this case a complete picture of Judge Swayne? Shall we present him to the Senate for his judicial acts and judicial conduct, or shall we limit our presentation to the mere ministerial act upon his part in falsely certifying his accounts?

This charge of false certification only came into the record a few weeks ago. It is not the thing that provoked the hostility and aroused the people of Florida. They did not complain of it, for they knew not of it, but they have complained and do complain of his judicial acts and his judicial conduct, and it seems to me, upon the record as it is here made, that this House can not afford by simply voting for one specification—to wit, that of a false certification of his accounts—to thereby indorse all the judicial acts and conduct of Judge Swayne about which complaint has been made.

I know that it is a serious matter to impeach a judge, but in my judgment it is a more serious matter to continue in office an unworthy, unjust, and corrupt judge. If we will turn to the Constitution, we find that the purpose of an impeachment is not to punish anybody. The purpose of an impeachment is to protect the people, and the punishment that falls, in the shame and humiliation to the officer impeached, is but an incident to and is not the purpose of the impeachment.

The framers of our Constitution were zealous for the independence of the judiciary, and so they deemed it advisable to make the term of office long, but they did not make it for life; they made it during good behavior. The framers were zealous in many ways for protecting the judiciary, and so they provided not only for long terms but,



provided also that the compensation of our judges should not be diminished during their continuance in office. They did not provide that it should not be increased. Their intention was that a hostile legislature should never punish a judge by reducing his salary for some opinion that he had rendered. But zealous as these men were for the independence of the judiciary, they were equally as zealous for the protection of the liberties of the people. And while they threw these safeguards around the judiciary, they were careful to provide that the tenure of office of a judge should be only during good behavior, and, then, to provide that any civil officer might be impeached and removed from office for treason, bribery, or other high crimes and misdemeanors.

Mr. Speaker, the only provision in the Constitution of the United States for the removal of a judge is the provision for impeachment. Many of the States, perhaps a majority of them, have provisions for removing an unjust judge in other ways than by impeachment; but the framers of the Constitution of the United States provided no other way for removing an unjust judge than by impeachment. It seems to me, therefore, that it would be a waste of words and a waste of time to undertake to demonstrate that the term "high crimes and misdemeanors," as used in the Constitution, comprise and include, broadly speaking, everything that is not good behavior upon the part of a judge.

The term of a judge, as fixed by the Constitution, is during good behavior. The moment the good behavior ceases, under the very letter of the Constitution, the term of office expires, and the Constitution provides, by impeachment, that the term of office shall be declared at an end and the incumbent removed. Many authorities could be cited to sustain these propositions, but I will not detain the House long enough to cite more than a few of them.

Article II, section 4, of the Constitution provides:

The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

Article I, section 3, provides:

The judges, both of the superior and inferior courts, shall hold their offices during good behavior, and shall at stated times receive for their services compensation which shall not be diminished during their continuance in office.

Article I, section 3, provides:

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law.

In the writings and speeches of Samuel J. Tilden, volume 1, page 474, this language occurs:

Impeachment, as it exists in the United States, under the Federal Constitution and State constitutions, is a proceeding for the removal from public office of a public officer, if cause therefor is found to exist. Its object is not to punish the individual, but to protect the people. Even a disqualification to hold office, if it be superadded to the removal, is more preventive than penal.

And on page 480 we find this:

Any conduct in a judicial office which degrades it in the public esteem, which scandalizes the administration of justice, or which justly impairs the respect and confidence of suitors of the bar and of the people generally in the impartiality, purity, and trustworthiness of the court is an impeachable offense.

In the History of the Constitution of the United States, by George Ticknor Curtis, in volume 2, page 260, is found this language:

The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. Such a cause may be found in the fact that, either in the discharge of his office or aside from its functions, he has violated a law or committed what is technically denominated a crime. But a cause for removal from office may exist when no offense against positive law has been committed, as when the individual has from immorality or imbecility or maladministration become unfit to exercise the office.

In the Commentaries on the Constitution of the United States, by Roger Foster, volume 1, page 569, this statement is made: .

The object of the grant of the power of impeachment was to free the Commonwealth from the danger caused by the retention of an unworthy public servant.

Again, on page 586, this statement:

The Constitution provides that "the judges, both of the Supreme and inferior courts, shall hold their office during good behavior."

This necessarily implies that they may be removed in case of bad behavior. But no means, except impeachment, is provided for their removal, and judicial misconduct is not indictable by either a statute of the United States or the common law.

Again, on page 591, this statement:

An impeachable offense may consist of treason, bribery, or a breach of official duty by malfeasance or misfeasance, including conduct such as \* \* \* an abuse or reckless exercise of a discretionary power.

In Rawles on the Constitution, page 201, in speaking of the court of impeachment, it is said:

The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men. or in other words, from the abuse or violation of some public trust.

In Story on the Constitution (5th ed.), section 796, it is said:

Is the silence of the statute book to be deemed conclusive in favor of the party until Congress have made a legislative declaration and enumeration of the offenses which shall be deemed high crimes and misdemeanors? If so, then, as has been truly remarked (citing Rawles on the Constitution), the power of impeachment, except as to the two expressed cases, is a complete nullity and the party is wholly dispunishable, however enormous may be his corruption or criminality. It will not be sufficient to say that, in the cases where any offense is punished by any statute of the United States, it may and ought to be deemed an impeachable offense. It is not every offense that by the Constitution is so impeachable. It must not only be an offense but a high crime and misdemeanor.

Now, bearing in mind that the purpose of impeachment is simply to remove an unworthy public officer and not primarily to punish anyone, it will not be amiss for this House to consider for a moment the situation as it exists in the State of Florida. Gentlemen may take this record, and if they read it through they will find throughout its pages the statements of attorneys and other citizens that Judge Swayne bears the reputation in that State of being an unjust and being a partial judge. Every lawyer knows—and the majority of the membership of this House is made up of lawyers—every lawyer knows the great power that a Federal judge possesses, and members of the bar for more reasons than a proper desire to observe the respect and decorum due to the court are careful not to needlessly antagonize him. When volunteers are called for to give the death stab to the pride and honor of a judge by preferring articles of impeachment against him there are not many to respond; and to my mind it is a thing of vast significance that lawyers with large interests to protect

have come before our committee and testified as to the bad character and the bad reputation of this judge.

It is, to my mind, strong evidence that the complaints made in this case have a solid basis of fact to rest upon. But going a step farther, we find that the legislature of Florida on two occasions, at an interval of, I believe, about 10 years, have declared that this judge bears the reputation of being a corrupt judge, and they have asked the Congress of the United States to remove him. I know that gentlemen upon this floor have said that these resolutions were "lobbied" through the Florida Legislature, but I do not know where they get authority to attack the honesty and the integrity and the virtue of the highest lawmaking body of one of the sovereign States of this Republic.

It seems to me that it is beneath the dignity of a Member of this House to stand in his place upon the floor and assert upon this record now before us that these resolutions were lobbied or were corruptly or improperly passed through the Florida Legislature.

A sovereign State, through its chosen representatives, has placed upon its permanent records and given broadcast to the world the statement that the people of Florida doubt the integrity of this judge and believe that his official actions are susceptible to corrupt influences and that they have been corruptly influenced. The Congress, the only body on earth possessing the power to grant relief, is petitioned for that relief.

Will the Congress spurn the petition and deny the relief?

Will Congress add to a condition already deplorable and desperate a charge of dishonesty and corruption against the lawmaking body of the State?

Can we who love our Government and love the law as its mainstay and support send this judge back to the people of Florida and expect the law, as represented in his person, to be respected? Can we expect the people to believe that he will hold the scales of justice evenly? Will we not, by such a course, make of a situation already bad a situation infinitely worse?

I do not ask this House to impeach Judge Swayne because the Florida Legislature passed these resolutions, but I do ask the House to bear these resolutions in mind, as furnishing further and convincing proof of the bad reputation that this judge by his walk and his conduct builded for himself in the State of Florida. If gentlemen upon this floor would bear in mind this reputation, known to all the bar and all the people of his State, they would be at no loss in understanding all that was said and done in the contempt proceedings complained of, as well as in the other proceedings concerning which charges are made.

#### FALSE CERTIFICATIONS.

Now, as I said, I am not going to take the time of the House to discuss all of the specifications. So far as the specification for making false certifications of his expense account is concerned, I believe the House is practically a unit in agreeing that dishonesty is a ground for impeachment. I hope the House with nearly the same unanimity will agree that dishonesty ought to be impeached.

The law provides that judges of the United States courts shall not receive other compensation than the salary provided by law.

It also says that judges when holding court outside of their districts shall receive "for reasonable expenses for travel and attendance" a sum "not to exceed \$10 per day," to be paid on the certification of the judge. The record shows that Judge Swayne invariably certified for the \$10, and that his actual expenses were far below \$10. The record shows that during his incumbency of office he has added to his salary an average sum of \$1,000 per year by these false certifications.

Now, I do not intend to discuss this ground. It has been discussed fully and completely already. I want to make one suggestion with reference to it. We have had circulated among the Members of this House the statement that other judges certified to the full \$10. Well, suppose they did. As has been well said, it is no evidence that they did not expend the \$10. But my suggestion goes beyond this. This same paper furnishes us with the evidence that many of the judges, a very large percentage of them, never certified for the \$10. Now, Mr. Speaker, with these facts before us, that many of the judges never certified for the \$10, that Judge Swayne invariably certified for the \$10, and invariably never expended it; shall we, by refusing to impeach him on that ground, say to all those judges who have never certified for the \$10 that they have been fools to be honest, and that they have made a mistake in not taking the money themselves? Shall we slap their honesty in the face, because, at least as to them, their honesty is established by the record?

#### NONRESIDENCE.

In reference to the specification as to nonresidence a great effort has been made to becloud what is a very simple issue. Section 551 of the Revised Statutes reads:

A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

Now, Judge Swayne either complied with this law or he did not. The issue presented is not one of presumption, of intention, or of law. It is one of fact. Judge Swayne either resided in his district or he did not reside in it. The record before us shows that from 1894, the year in which Congress changed the lines of his district, to 1900, a period of six years, he was physically not in his district but about 60 days a year, or was there only during the actual time in which he was engaged in holding his court. He had no family in the district, no home, nor place of residence. He had no property and paid no taxes in the district. He did not vote, nor was he on the list of voters. There was no place in the district where service of legal process on him could be perfected by leaving at his most notorious place of abode. There was no post office in the district known as the one where a letter would reach him. When out of the district the general understanding was that mail would reach him at Guyencourt, Del. In 1900 he and his wife occupied a rented house in Pensacola, in his district, for two or three months, and from then on until in 1903, when the Florida Legislature passed its resolutions of impeachment against him, he made no pretense of residing in the district. He did not possess, from 1894 to 1900 and from 1900 to 1903, one single attribute of citizenship in his district.

On this record, therefore, I submit that he should be impeached and sent before the Senate, there to submit for the consideration of the Senate the various excuses he has offered for not residing in his district.

#### THE USE OF THE PRIVATE CAR.

In reference to the use of the private car, it has been said by some gentlemen that this did not involve much cost to the bankrupt estate. One gentleman, I believe, said that the use of the car from Delaware to Florida did not cost the bankrupt estate more than \$20; but the question before us is not how much it cost the bankrupt estate, but did this judge engage in practicing a waste to any extent of the bankrupt estate submitted to his care? To my mind it is bad enough and unpardonable enough in a judge if he permits others to commit waste upon a bankrupt estate committed to his care, but it is simply inexcusable if he commits the waste himself. This specification has been so fully discussed by others that I will not consume time in discussing it.

#### THE HOSKINS CASE.

As to the Hoskins bankruptcy case, I shall not take up the time of the House in detailing the facts or in discussing it. I assume every Member of this House is now familiar with the case, but if he is not, he can easily make himself so by taking this record and going through it. We have disclosed in the record of the Hoskins case the baleful, corrupt, and demoralizing effects of Judge Swayne's administration of the law in the State of Florida.

We have here a case where a man worth \$40,000 and owing only \$10,000 is forced into bankruptcy by conspirators, who demand blood money from him. He is forced into bankruptcy over his protest, over the protest of his lawyers, and over the protest of his largest and principal creditor, and all because he will not pay blackmail or blood money. We have disclosed the most remarkable ruling, the most remarkable deduction of law or of administration, that it has ever been my fortune to read or to hear. We have here this judge declining to take up the Hoskins case and dispose of it, declining to hear Hoskins's witnesses, because, as he announced from the bench, he would not believe them if they testified.

Mr. Speaker, the great wrong done in this case happened either through the stupidity, or ignorance, or corruption, or indifference of this judge, and it matters not to us which one. To my mind, where such things are possible under the administration of any judge, that judge ceases to be a fit man to hold the office longer.

#### THE DAVIS AND BELDEN CONTEMPT CASE.

I wish now to discuss a trifle more at length, but still briefly, the contempt cases that have been brought into this matter, because to my mind they furnish the most serious of all the cases alleged against Judge Swayne. They deal with the deprivation of human liberty, which, next to life, is the most sacred possession of each citizen of this Republic.

I will not weary the House with recounting the history in detail of the law with reference to punishments for contempt, but I will call



to the attention of the House the fact that from 1789 up to 1831 there was no law providing what was or was not a contempt of court. The courts were left to exercise their free, unlimited discretion in defining and in punishing contempts.

Under the law as it thus stood, a judge out in Missouri, Judge Peck, sentenced a young lawyer to 24 days in jail and to disbarment from the practice of the law for 2 years because he had published in a newspaper an anonymous letter criticising an opinion that the judge had handed down, an opinion, by the way, that the Supreme Court subsequently reversed. Because of this act of that judge he was impeached by the House of Representatives and impeached notwithstanding the fact that there was no law defining a contempt of court; that there was no law limiting the power of the judge to punish for contempt. The House impeached him, but in the Senate he was acquitted by a vote of 22 for conviction to 21 for acquittal, and immediately afterwards the Congress, in 1831, passed the present law of contempt.

That law as originally passed read as follows:

[Chapter XCLX.]

AN ACT Declaratory of the law concerning contempts of court.

*Be it enacted, etc.,* That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts.

SEC. 2. *And be it further enacted,* That if any person or persons shall, corruptly or by threats of force, endeavor to influence, intimidate, or impede any juror, witness, or officer in any court of the United States in the discharge of his duty, or shall, corruptly or by threats of force, obstruct or impede, or endeavor to obstruct or impede, the due administration of justice therein, every person or persons so offending shall be liable to prosecution therefor by indictment, and shall, on conviction thereof, be punished by fine not exceeding five hundred dollars or by imprisonment not exceeding three months, or both, according to the nature and aggravation of the offense.

Approved, March 2, 1831.

The first section thereof is now known as section 725 of the Revised Statutes and the second section as section 5399 of the Revised Statutes.

At the time of the passage of this act there was another law somewhat akin to the second section of said act in force. It is found in section 5398 of the Revised Statutes, and reads as follows:

Every person who knowingly and willfully obstructs, resists, or opposes any officer of the United States in serving, or attempting to serve or execute any mesne process or warrant or any rule or order of any court of the United States, or any other legal or judicial writ or process, or assaults, beats, or wounds any officer or other person duly authorized in serving or executing any writ, rule, order, process, or warrant, shall be imprisoned, etc.

The act of 1831 was construed by the Supreme Court in the Robinson case (19 Wall., 505) to limit and define the powers of the court to punish for contempt. It was held that a judge could not, under said act, punish for contempt except in three classes of cases. He could punish, first, where there was misbehavior in the presence of the court, or so near thereto as to obstruct the administration of justice. He could punish, second, the misbehavior of an officer of his court in

his official transactions; and, third, he could punish the disobedience to or resistance of any lawful writ or command or decree of his court.

Now, the power of the courts to punish was by this act limited to these three specific instances.

Before we can undertake to say whether Judge Swayne went beyond the power given to him and violated this law, we must look to the record and see what these defendants charged with contempt were charged with doing. We must take the rules that were issued by the court against them, and we must square them by the law in order to see whether or not the judge kept within the limits of his power. It will not do to allow this judge to come before us two or three or more years after this incident happened and assign a reason why he punished these men. The record is made up, and that record shows why he punished them, and what he charged them with having done.

Now, so far as I recall, the rule that was served upon Davis and Belden, the two lawyers who were punished for contempt has not been called to the particular attention of this House. I want this House to take this rule and see what the court said these lawyers did, and then square it with the law and see if the judge did not exceed the power given him under the law. Now, the rule was:

And now comes W. A. Blount, an attorney and counselor at law of this court, and practicing therein, and as *amicus curiæ*, and moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court at a day and hour to be fixed by the court, why they shall not be punished for contempt of the court in causing and procuring, as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and the Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91 in the Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then pending in this court in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company et al. were defendants, upon the grounds:

1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of Mrs. Florida McGuire v. Pensacola City Company et al. had been submitted to the court on November 5, 1901, and denied, and after the said judge had stated in open court and in the presence of the said counsel, Simeon Belden and Louis Paquet that an allegation of the said petition that he or some member of his family were interested in or owned property in said tract, was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract because the said suit of Florida McGuire, involving the title to the said tract, was in litigation before him, the said judge.

2. That after the said declaration of the said judge, the said counsel were aware that neither the said judge, nor any member of his family, were the owners of or interested in any part of the said tract, and had no reason whatever to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in possession or control of anyone, but was entirely unoccupied.

3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of the said attorneys to postpone the trial of the case of Florida McGuire v. Pensacola City Company et al. for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

4. That the said E. T. Davis was before the instituting of the said suit against the said judge cognizant of all the facts herein set forth.

This is signed by W. A. Blount, attorney of record, and following that is a rule directed to the respondents to show cause why they should not be committed for contempt.

Mr. BARTLETT. I would like to ask the gentleman if the application is sworn to?

Mr. BRANTLEY. It is not sworn to. Now, this rule states all the alleged grounds of contempt. When you come to put them together, striking out the superfluous words, there is nothing in the grounds except the allegation that these attorneys, after 6 o'clock one evening, entered suit against this judge in a State court. That is the first allegation. The second is that the judge had no interest in the property for which they sued him, and therefore there was no foundation for the suit; and third, that the judge had previously declared to them that he had no interest. In other words, the sole and only allegation in this rule is that these attorneys sued this judge after this judge had stated in open court that he was not subject to be sued. That is the sum and substance of the rule brought against them. There is no allegation in the rule that bringing this suit was conduct constituting misbehavior in the presence of the court. There is no averment in this rule that it was misbehavior so near the court as to interfere with the proper administration of justice. There is no averment that it did so interfere. There is no averment in this rule that the bringing of this suit by these attorneys was misbehavior on their part in their official conduct. There is not an averment bringing the rule within the act of 1831.

There was absolutely nothing in the rule except the recital of the facts that these attorneys sued the judge, and sued him after the judge had announced that he was not subject to be sued. Now, when these attorneys came to answer some discussion has arisen as to why they did not purge themselves, as to why they did not make a denial. If you will but read the rule you will see that they were charged, in the first place, with having sued the judge. Surely they could not deny that, because they had sued him. It was charged in the rule that the judge had announced in court that he was not subject to be sued. That appears to have been a fact also, and they could not enter a denial to that. They were also charged in the rule with having had notice of a disclaimer of title or a disclaimer of interest by the judge, and that they did deny, and that charge was the only averment of fact in the rule that gave the court any pretense of justification to punish them for contempt, and it did not give him jurisdiction to do so.

I take it, Mr. Speaker, that their answer was more in the nature of a demurrer than that it was an answer. They came into court, and this was their answer:

Before the Hon. Charles Swayne, judge circuit court United States, northern district of Florida. In re matter of contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

And now comes Simeon Belden and E. T. Davis, and for reasons why they should not be punished by contempt, sheweth:

First. That the grounds upon which the said contempt is based, to wit, summons in ejectment issued from the circuit court of Escambia County, Fla., wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, that said proceedings is in the jurisdiction of the circuit court of Escambia County, Fla., and that this court is without jurisdiction thereof.

Second. That the petition to recuse referred to in said motion they had nothing to do with before this court, nor were they present on the 5th day of November, when submitted, as stated in said motion, nor present when any statement made by the judge concerning his connection with any of the property, except the statement made by said judge on November 11, after court convened and after the motion to discontinue the case of Florida McGuire v. Pensacola City Company et al. was made.

Third. To the second paragraph sheweth: As above stated, they heard no declaration made by the judge referred to in said paragraph, and as for reasons to believe

that he, Judge Swayne, or some member of his family, was interested in block 91, Rivas tract of land named in said summons, we simply refer to the declaration made by Hon. Charles Swayne on November 11, 1901, when said motion was made by the Hon. W. A. Blount, and that after hearing said declaration, believe that there is in existence a deed to Mrs. Charles Swayne uncanceled, and that they have no knowledge of its repudiation, and as the negotiation for the property named in said deed was one made by Mrs. Charles Swayne in her individual right, that no act of the said Hon. Charles Swayne would repudiate or render null and void any transaction made by Mrs. Charles Swayne with her own money or property.

Fourth. That E. T. Davis for himself sheweth: That this court had no jurisdiction over him in said matter of *Florida McGuire v. Pensacola City Company et al.* until he requested the court to mark his name as attorney for plaintiff on the morning of November 11, when he presented the motion to discontinue the aforesaid suit.

SIMEON BELDEN.

E. T. DAVIS.

Now, here was a complete denial of the only allegation of fact in the rule that could have furnished the basis of any justification or claim of justification by the court to punish them. I can not find, so far as my research goes, that the conduct of these lawyers, as alleged in the rule, constitutes any contempt, under the definition of "contempt" as laid down in the act of 1831. Surely we have not reached that point where it is a contempt of court to sue a judge. Does the fact that a man is judge of a court put him beyond the pale of the law that he is bound to enforce? Ah, Mr. Speaker, when a lawyer sues a judge who says he is not the subject of a suit, is the lawyer in contempt because he does not believe him and brings the suit anyway?

These lawyers were denounced by this judge as being a stench in the nostrils of the people. They were fined \$100 each and sentenced to 10 days in jail, and in the original sentence they were disbarred for two years. This latter sentence was withdrawn when another lawyer, better informed than the judge, advised him he could not disbar as a punishment for contempt. These men were thus sentenced for what? For suing Charles Swayne, after Charles Swayne had said he was not subject to be sued. Mr. Speaker, if the lawyer representing a plaintiff brings a suit against any ordinary defendant after that defendant has told him he is not subject to suit, does the lawyer become a stench in the nostrils of the people and become a criminal? If not, why does he become so because the defendant chances to be a judge? Gentlemen upon this floor have stood in their places and extolled the conduct of Judge Swayne in this matter as being the conduct of a brave and a righteous and a noble judge. Let us see what he proposed to do, and did do. He issued a rule that these men having sued him, after he had announced that he was not subject to be sued, should show cause why he should not punish them for contempt, and then before their trial on the rule takes place he solemnly adjudicates the case in advance of the hearing by spreading upon the records of his court the statement that he was not subject to be sued. Before he arraigns them he puts upon the records of his court a finding of fact against them.

I will not weary you by recounting all that took place prior to the suit in the State court, because my purpose is to limit the discussion to the question whether or not the rule issued against these lawyers stated a case of contempt. I contend that it does not. What went before the filing of the suit in the State court, however, but adds to the awkward and unenviable position of the judge. Unquestionably he had been personally dickering for the purchase of some of the land



in controversy in the suit before him, whether for himself or wife is immaterial. A sale had been actually agreed upon. Some of the lawyers wrote him before court convened asking him to recuse himself. He did not answer the letter. Bearing in mind the reputation he bore, and even without this reputation, this failure to write seemed suspicious. If he had purchased the land, he was disqualified to try the case. If he had not purchased it, but had passed upon the title with a view to purchasing he was disqualified. It was common rumor that he had actually purchased—I ask Members of this House if, under these circumstances, there is any Member here, if he had been judge, who would have tried this case? With such facts existing, and with the lawyers questioning his competency, his fairness, and his impartiality, do you know any judge, save Judge Swayne, who would have insisted on trying the case?

At the time Davis and Belden were punished for contempt the other lawyer, Paquet, was not tried, because he had gone to New Orleans, where he resided. Some months later he filed in Judge Swayne's court this statement:

That upon full and mature consideration of his actions and conduct in the matter referred to in the motion made as the basis of the above-entitled proceedings, through excessive zeal in behalf of his clients he did so act that this honorable court was justified in believing that the said actions were committed in contempt thereof and as showing disrespect therefor. This respondent regrets exceedingly the course taken by him in this matter, and now appears in court and requests that he be permitted to apologize for his behavior and file with the records in the above-entitled cause this paper.

Whereupon Judge Swayne did not punish him, and much capital is sought to be made for the judge out of this statement and his action thereon. All that I get out of it is that Paquet had before him the experience of Belden and Davis and he profited by it. It is to be noted also that he does not admit that he had been in contempt or had done anything that would justify the court in punishing him. He admits only that the judge was justified in thinking or believing that disrespect to him was intended.

Mr. Speaker, I do not subscribe to the view that some Members of this House have expressed about contempts. It seems to me, if I understand them correctly, that some Members are of the opinion that if some other court had sustained this judge in this matter that is the end of it. I do not subscribe to that proposition. We might just as well say that Judge Swayne passed upon it and rendered a judicial opinion construing the law of contempt, and therefore that is the end of it. Why has not his court as much standing as any other court? My view about this matter is that the Congress of the United States had the jurisdiction and the right and the power to define by law what shall constitute a contempt. They did so define by law what constitutes a contempt.

How are we going to get away from this law? Are we going to allow a judge to construe the law away? If so, we might as well never have enacted it, and, in these contempt cases, if we can not call Judge Swayne down, what judge can we call down? If one judge can interpret the law of contempt to suit himself, if he can punish that which the law does not authorize him to punish, another judge may do likewise, and the protection to liberty that Congress intended to provide is gone. Mr. Speaker, if we can not rebuke this judge for this perversion of the law we might as well wipe out the law in reference to contempt.



## THE O'NEAL CONTEMPT CASE.

Let us look a moment at the O'Neal case. The gentleman from Alabama [Mr. Clayton] who just preceded me stopped for want of time when he reached that case and could not discuss it. I will not discuss it at much length, but let me call the attention of this House to the fact that in that case we now have, through the industry of the gentleman from Maine [Mr. Littlefield], I believe, or perhaps the gentleman from California [Mr. Gillett], the complete transcript of the trial of O'Neal. It is printed in the Record, I believe, of last Saturday, and each member can read it for himself. I wish that every member of this House would read it. If the members will read that transcript, they will get a pretty clear idea how Judge Swayne administered the law in the State of Florida.

Now, let us see about O'Neal. O'Neal was a banker. A man by the name of Greenhut, a director, or who had been a director, in O'Neal's bank, was appointed a trustee in bankruptcy. Greenhut, in the administration of his bankruptcy estate, brought a suit that involved some property rights of the bank of which O'Neal was president. It is immaterial what they were. O'Neal met Greenhut. They had some words and a difficulty, and O'Neal, with a knife, cut Greenhut. Now, the district court was not in session. Judge Swayne was not even in the State of Florida. Some months later, when he returned, Greenhut made an affidavit, and upon that affidavit O'Neal was arraigned for contempt. And right here, as in the other case, we want to look at the affidavit of Greenhut, which was the basis of the rule to show cause in order to see whether or not Judge Swayne followed the law giving him the authority to punish for contempt.

Mr. GILBERT. Was Greenhut an officer of the court?

Mr. BRANTLEY. He was a trustee in bankruptcy and to that extent I suppose was an officer of the court. Let us turn to Greenhut's affidavit. He alleges that he was advised by his counsel to bring a certain suit, and that upon the advice of counsel he brought the suit. Then he alleges that this assault upon him was made by O'Neal to interfere with and prevent him from executing and performing his duties as such officer of said court. He says that the said O'Neal did, by the said murderous assault, interfere with the management of the said trust by him as an officer of said court, and that for a long period of time, to wit, from the 20th day of October up to the present time (the time of the affidavit), by reason of the injuries inflicted by O'Neal upon him, as aforesaid, he was prevented and deterred from performing the duties incumbent upon him as such officer. Now, upon that affidavit the rule was issued. The averments are that O'Neal assaulted Greenhut for the purpose of interfering with him in the performance of his duties.

Now, the statute in reference to contempt has no provision of that sort in it. The statute in reference to contempt reads that where there is a disobedience to or a resistance of a lawful writ of the court the court may punish for contempt. As a matter of fact, there was no interference with the suit filed by Greenhut. It was not delayed a moment, nor was it alleged to be.

There was no decree or order of the court that was resisted or disobeyed, and none was alleged to have been.

Mr. SHERLEY. Will the gentleman permit a suggestion right there?

Mr. BRANTLEY. Yes, sir.

Mr. SHERLEY. In the original act defining contempt was there not a second paragraph which did cover such cases as this, and which provided for punishment by indictment and not by proceeding in the court for contempt?

Mr. BRANTLEY. The gentleman is entirely correct, and I have already called attention to said act. I call attention now to the fact that in this affidavit, which is the affidavit upon which Judge Swayne sentenced O'Neal to 60 days' imprisonment, there is not a single averment that brings the act of O'Neal within the contempt law. Now, it may be true, as suggested by the gentleman from Kentucky, that if the contentions of Greenhut were correct O'Neal may have violated a section of the Revised Statutes. He may have violated section 5398 or section 5399 of the Revised Statutes, already quoted, or he may have committed a breach of the peace, for which the State courts could punish him, and, as a matter of fact, he was arrested under a State warrant.

If O'Neal violated either section 5398 or 5399 of the Revised Statutes, he was entitled to a trial by jury and a conviction by jury before he could be punished therefor. I submit that the rule that was served upon him made no averment and no allegation that brought his act within the rule of the law with reference to contempt.

Now, if the Members of this House will turn to the transcript of the trial of O'Neal, as put into Saturday's Record, the first thing you will notice there is that the prosecution opened the case by offering a record to prove that after the suit was filed by Greenhut that Greenhut went to the court and got an order especially authorizing him to bring the suit in order to make it appear before Judge Swayne that O'Neal was violating an order of the court. There was not a single averment in the rule or in the affidavit that there had been any order or mandate of the court disobeyed or resisted. The only averment in the rule and in the affidavit is that Greenhut was advised by his counsel to bring the suit, and yet Judge Swayne admits the record as asked for. The next move that the prosecution made was to proffer witnesses to prove that Greenhut was a man of good character and of good reputation for peace and orderliness. Counsel for O'Neal objected to that testimony. They said: "We have not sworn a witness; nobody is attacking the character of Mr. Greenhut." I know of no law that admitted the testimony, and yet Judge Swayne admitted it. Then the prosecution proceeded to prove by witnesses the bad reputation of Mr. O'Neal for peace and good order.

Mr. PALMER. My friend, I think, is mistaken in that they did not call witnesses to testify to his bad character; they made O'Neal testify to that himself. That is what that judge did.

Mr. BRANTLEY. I accept the correction. When O'Neal was on the stand they asked if he had not pleaded guilty to carrying a concealed pistol and to shooting across the street. The question was objected to, and properly, but it was allowed, and O'Neal furnished, as the gentleman from Pennsylvania states, all the evidence that was offered in reference to his character. Now, take that transcript of the record and go a step further and read the opinion of Judge

Swayne if you want to understand how he administered the law. You will find that he proceeded to sum up the testimony. He found that there was a conflict between O'Neal and Greenhut as to whether O'Neal acted in self-defense or not. Then he recounted the law about self-defense and told how a man must retreat and retreat before he uses a deadly weapon, and then he finally finds that the record shows O'Neal to be a man of bad character and Greenhut to be a man of good character, and therefore he must believe Greenhut, and find that O'Neal did not act in self-defense in cutting Greenhut, and he therefore sentences him to 60 days in jail. We know that it made no difference in the case before Judge Swayne whether O'Neal acted in self-defense or not. The sole and only issue was as to whether or not he committed an attempt, and yet Judge Swayne apparently tried the case upon the issue of the guilt or innocence of O'Neal in making the assault.

When O'Neal filed his answer in this case, he swore as positively as a man could swear that he intended no contempt or disrespect to the court; that it was purely a personal disagreement that he had with Mr. Greenhut, and if you take all the record you will not find a syllable of testimony that contradicted O'Neal. The vital point, the only point, the only thing that was before the judge was, Did O'Neal commit contempt in this matter? and that phase of the question escaped the attention of the judge entirely.

Mr. MADDOK. Did this fight occur in the presence of the court?

Mr. BRANTLEY. Oh, no. My friend from Georgia was not present just now or he would have heard that this occurred when the district court was not in session and when the judge was not even in the State of Florida. It was during a vacation.

Mr. Speaker, if there ever was a violation of this statute with reference to contempt by any judge it was committed by Judge Swayne in the O'Neal case. These gentlemen who were arraigned and convicted by Judge Swayne did not submit uncomplainingly to his rulings. They undertook to appeal their case to the higher courts, but they found that they could get no relief.

In *Ex parte Fiske* (113 U. S., p. 118) the Supreme Court said:

There can be no doubt of the proposition that the exercise of the power of punishment for contempt of their orders by courts of general jurisdiction is not subject to review by writ of error or appeal to this court. Nor is there in the system of Federal jurisprudence any relief against such orders, when the court has authority to make them, except through the court making the order, or possibly by the exercise of the pardoning power.

In *Hayes v. Fischer* (102 U. S., 122) the Supreme Court said:

If the proceeding below, being for contempt, was independent of and separate from the original suit, it can not be reexamined here, either by writ of error or appeal. This was decided more than 50 years ago.

In construing the act creating the circuit court of appeals with reference to its power to review contempt proceedings, the Supreme Court, in 194 United States, 338, said:

On such a writ only matters of law are considered. The decision of the trial tribunal, court, or jury decides the facts, is conclusive as to them.

In *Ex parte Kearney* (7 Wheat., 45) the Supreme Court said:

Wherever power is lodged it may be abused. But this forms no solid objection against its exercise. Confidence must be reposed somewhere; and if there should be an abuse it will be a public grievance for which a remedy may be applied by the legislature, and is not to be devised by courts of justice.

In American and English Encyclopedia of Law, volume 3, page 800, it is said, in reference to contempts:

The exercise of the power lies solely in the discretion of the judge before whom the contempt is committed, and will not be examined or reexamined by any other court except when the proceedings are so grossly defective as to be void. The only other remedy according to the English and more generally received American doctrine, for any error, injustice, abuse of discretion, oppression, or corrupt conduct on the part of a judge of a court of the superior order is by resort to an impeachment before the legislature.

When Davis got his case before the circuit court of appeals that court said, in *Ex parte Davis* (112 Fed. Rep., 142):

To hear and decide whether the relator was guilty of such contempt, and if found guilty, to punish him for such conduct, was clearly within the jurisdiction of the court, and the court having exercised such jurisdiction and found the relator guilty of contempt, its finding against the relator can not be reviewed on habeas corpus.

When O'Neal got his case to the Supreme Court the court said, in 190 United States, page 38:

And while proceedings in contempt may be said to be *sui generis*, the present judgment is in effect a judgment in a criminal case over which this court has no jurisdiction on error.

Mr. Speaker, I submit that where a judge of a court of general jurisdiction abuses his power in this matter of contempt there is but one remedy, and that is the remedy of impeachment. These gentlemen who were mistreated by Judge Swayne appealed to the courts above, and they were dismissed with the statement that "We can not review the facts in the case." They told O'Neal that Greenhut was an officer of the court, and Belden and Davis that they were officers of the court, and that it was for the trial court to say whether or not they were in contempt.

These various matters have come now to the court of last resort. Under the system of jurisprudence builded up by the courts this Congress is the only body that seems to have the power to review the facts in these contempt cases.

The SPEAKER pro tempore. The time of the gentleman from Georgia [Mr. Brantley] has expired.

Mr. BRANTLEY. May I have a few moments more?

Mr. PALMER. I yield to the gentleman from Georgia [Mr. Brantley] 15 minutes more.

Mr. BRANTLEY. I thank the gentleman from Pennsylvania [Mr. Palmer.]

Mr. Speaker, this House has the power to review the facts in these contempt cases. We have not the power to undo the wrong that was done to O'Neal, for, as has been said in this discussion, he has gone to his final reward. We have not the power to undo the wrong done to that old gentleman, Mr. Belden, who served his imprisonment in jail. But we can condemn these wrongs and prevent their being done to other people by removing Judge Swayne from office.

To my mind we are not concerned in this House with what the Senate may do. It is no matter of concern to us whether we think the Senate will or will not sustain a particular article of impeachment. It is no concern to us what the views of the Senate may be. Our concern is, What is our view? Let us do our duty and assume that Senators will do theirs. Mr. Speaker, I submit that the framers of this Constitution, who were endeavoring to safeguard the liberty of

the freest people on the face of the earth, never dreamed of or intended to provide for them the greatest engines of oppression possible to be devised, to wit, courts that could arbitrarily, without a jury and without being subject to review, take away the liberties of the people.

There is a great question involved in this case, and that question is whether or not the enactment of this Congress, limiting the power of a judge to punish for a contempt, shall be enforced or shall we allow it to be set at naught.

Now, I do not wish to consume further time, but in conclusion I want to submit that in this prosecution there is no attack upon the Federal judiciary. This prosecution is in defense and in protection of the judiciary. We would all maintain and preserve this great arm of the Government in all of its strength and in all its purity and in all its independence; but there is but one way to preserve it, and that is by purging it of its unworthy members.

Mr. Speaker, the powers of the judiciary are too vast; its responsibilities are too great for us to permit any swerving from the straight path of duty by its members.

We should hold to the strictest accountability those in whose keeping we have placed our lives, our liberties, and our fortunes. We should honor and praise without stint those who keep inviolate the sacred trust confided to them and pour out unlimited condemnation upon those who prove unworthy. Jefferson declared in his disappointment at the failure of the Senate to convict Judge Chase, that "impeachment is the scarecrow of the Constitution." Shall we who come upon the stage an hundred years later be forced to the same conclusion by reason of the verdict arrived at in this case? Rather let us hope, as I hope and believe, that impeachment will prove to be the sword of Goliath, ever kept in the temple and brought out only on great occasions, but when brought out cutting smooth and clean corruption from incorruption, tyranny from liberty, and oppression from justice.

Mr. Speaker, I thank the House for its attention. [Loud applause.]

Mr. GILLET of California. Mr. Speaker, I yield fifteen minutes to the gentleman from Iowa.

Mr. LACEY. Mr. Speaker, in the brief time allotted to me, I want to confine myself to one legal proposition involved in this case, and that is the question as to the allowance of \$10 a day. As I understand, the Committee on the Judiciary are very much at variance in their opinion as to all the other charges; but upon this one charge the majority, at least, of them think Judge Swayne ought to be impeached.

I want to call the careful attention of this House to the law as contained in the statutes.

In the first place, the Revised Statutes (the act of 1871 was included in these statutes) provided that when a district judge was assigned to duty outside of his circuit (sec. 596) he shall hold court without other compensation than his regular salary, except as provided in the southern district of New York, in which district \$10 was the maximum of expenses for those who sat in that district. That was the statute from 1871 to 1881 and embraced in Revised Statutes of 1873. In 1881 that section was repealed, and in lieu thereof a provision was made giving actual compensation for expenses incurred by a district judge in holding a court outside of his district.



Mr. PALMER. Will you not please quote the statute that gives actual expenses?

Mr. LACEY. I will cite the section, and I will incorporate in my remarks a digest of every one of these statutes, so that gentlemen who want to get at the truth in this matter from the record need not take the word of anybody upon the floor of the House, but can go to the statutes themselves and ascertain precisely what the law was. In 1891 there was a law passed creating the court of appeals, and in that act there was a provision allowing to the circuit judges their expenses. The language was "their reasonable expenses of travel and attendance, not to exceed \$10 a day." That was the statute of 1891. In 1881 the statute had been passed giving to the district judge their actual expenses when outside their districts.

Subsequently a district judge was permitted to participate as a member of the court of appeals. So the district judge found himself in this situation: When he was sitting in the court of appeals he could certify to \$10 a day. When he was holding circuit or district court outside of his district he had to itemize his expenses, but might draw more or less than \$10 a day. So the question was presented to the Comptroller of the Currency (2 Reports of Comptroller of the Currency), before Mr. Bowler, in which District Judges Wood, Jenkins, and Showalter are said to have made this statement, as recited by Mr. Bowler:

The contention of these judges is that when district judges hold court outside of their own districts by order of the Supreme Court they are entitled to be paid for their expenses a per diem of \$10, evidenced by their own certificate, and not required to furnish any itemized statements of their expenses.

That was in December, 1895. Mr. Bowler held that that law applied only to the circuit court of appeals, and did not apply to the judges when they were holding district or circuit court outside of their circuits. I commend to the attention of the House this decision of Comptroller Bowler. I will insert it in my remarks.

In 1896 the subject was brought up before the House Committee on Appropriations and they put into an appropriation bill (29 Stats., 451, June 11, 1896) the following language; or, rather, this is the language as it remained when both Houses finally got through with it:

Reasonable expenses of travel and attendance of district judges directed to hold court outside their districts, not to exceed ten dollars per day each, to be paid on written certificate of the judges, and such payment shall be allowed to the marshal in the settlement of his accounts with the United States.

That is the law to-day. It reads the same as the statute for the court of appeals. Now, it is instructive to find out how that act got into the statutes. We in the House passed that law without the provision as to the marshal's accounts and sent it to the Senate. When the bill came up in the Senate, the Senate put in an amendment providing that—

Such payment shall be allowed the marshal in the settlement of his accounts with the United States.

The committee put that in and reported the bill to the Senate, and on April 24, 1896, it was being debated in the Senate.

Senator Allen, then a Senator from the State of Nebraska, a Populist, an economist, and a former judge, and an able lawyer, called attention to the situation. He said:

Mr. President, I desire to call the attention of the Senator from Iowa—

That is, Senator Allison—

to a fact which came to my knowledge the other day, and it is to the effect that under this law, or laws similar to this which have been passed, where Congress allows compensation to judges who hold courts outside of their particular districts, and especially the United States appellate judges, that in all instances they certify to \$10 a day, regardless of the actual expenses to which they are put. The evident policy of the law was to cover the actual expenses of the judges at hotels and for traveling expenses not to exceed \$10 per day.

A little later on he says that he does not mean to assert that all of them do it. He says:

Not all, I do not say all, but I say that there are judges who do it—district judges holding, for instance, courts of appeal. Some of them do certify uniformly to \$10 a day and take \$10 a day out of the Government in cases where their legitimate expenses are not, and in the nature of things can not be, to exceed three or four dollars a day.

Then he made a motion to put in the following amendment:

Which certificate shall state in all cases that the judge has actually incurred the different expenses therein stated.

Senator Allison replied to that. Said he:

The object of the provision, as I stated a while ago to the Senator from Nebraska, is to equalize the judges when they travel outside of their circuits or districts to hold court. If there are abuses of the provision as respects circuit judges (there can not be abuses with respect to district judges), if the circuit judges are in the habit of certifying to more than they ought to certify, it would be wiser and better to allow the equality to be established, and then let the Judiciary Committee of this body take cognizance of the whole question and make such modifications of the statute of 1891 as will cure the defect or the evil which seems to be in the mind of the Senator from Nebraska. I hope that will be satisfactory to the Senator and that he will allow the amendment to go in without objecting to it.

But Senator Allen insisted on his amendment, and the amendment went in, as follows:

Which said certificate shall state in all cases that the judge has actually incurred or paid the expense therein stated.

The bill went to conference with that amendment in it from the Senate, and this House, which is now sitting in judgment on Judge Swayne, struck that provision out in conference, that the judge should certify that he had actually spent this money. This House struck that out, and on page 5821 of the Congressional Record, May 27, 1896, first session, Fifty-fourth Congress (here is the entry), and this conference report was signed by Joseph G. Cannon, E. J. Hainer, and J. D. Sayers, conferees on the part of the House, and W. B. Allison, Eugene Hale, and A. P. Gorman, conferees on the part of the Senate:

That the House recede from its disagreement to the amendment of the Senate No. 177, and agree to the same with an amendment, as follows:

In lieu of the matter inserted by said amendment insert the following: "And such payments shall be allowed the marshal in the settlement of his accounts with the United States;" and the Senate agree to the same.

That is the parliamentary history of the statute. That is how it got there. It first became the law in 1891. Senator Allen said that the judges—first he said all of them and then many of them—took the straight \$10 per diem. Three district judges submitted the proposition to Mr. Bowler, contending that they understood that the \$10 allowance applied to them, and that they were entitled to the \$10 per diem. That was in 1895. In 1896 the Committee on Appropriations took up the matter and copied literally—verbatim—the language of the act of 1891, making an allowance of \$10 a day to the

judges of the court of appeals, and that became the law as to the district judges. When the Senate asked to make that perfectly plain by requiring that the judges certify that they had actually spent the money or incurred the expenses the House refused to concur, and struck it out. And now, Mr. Speaker, we are asked to sit in judgment upon this judge, who simply followed the precedent that was stated by Judge Allen in the Senate of the United States.

We have since that time made the appropriation year after year for the payment of this same money provided for in the act of 1896, and have copied the same identical language inserted in the act of 1896, which was copied literally from the act of 1891.

This is the situation, and I do not care to discuss whether, as an abstract proposition, it is properly an allowance of \$10 a day or not; that is not the question. We are here to determine that this judge should be impeached, and when the accounting officer of the Treasury, Mr. Bradley, was before the Judiciary Committee, which was investigating this matter, and Judge Swayne's counsel asked him if it was not usual for the judges, substantially all of them, to put the same construction upon it, the committee refused to allow that question to be answered, and have presented the present impeachment before this House and ask us to find that that which we had in our minds and refused to put into the statute was binding upon these judges, and that they should be held criminally responsible.

Edmund Burke once said, "You can not indict a nation;" and I say you can not indict an entire bench. We can not indict more than half of the judges who uniformly adopted this rule which the district judges contended applied to them in 1895, and which we subsequently applied to them by the appropriation bill of 1896.

We should not convict these men of malfeasance in office, moral turpitude, and wickedness. We should not send this charge to the Senate without this committee taking up the question as to other judges. If Swayne is to be convicted, the whole question should be investigated. If this judge goes out, the other judges should be tried, too, if they made the same mistake. On the other hand, if it is a question of construction and it has been misconstrued, why dismiss the judge?

We have just now heard the decision in the Burton case, and the judges, five to four, say that the court below made a mistake in the law. It is a well-settled rule that every man is presumed to know the law except the judge, and the judge is excused from that presumption, for he has the court of appeals to correct him. If there is a controversy between one of these gentlemen and myself about a contract in which a statute is connected, we are both conclusively presumed to know the statute and to know exactly what it means; but there is no such presumption in favor of the judge who tries the controversy between us. The court of appeals sits to correct him. To err is human, and the errors of courts may be reviewed and corrected.

Mr. CLAYTON. It is presumed that the judge is learned in the law.

Mr. LACEY. Yes; and it is presumed that my friend is also learned in the law, but he made a mistake in not going into the history of this statute. The committee made a mistake in presenting this charge before the House without investigating the source of

this statute, and that, too, on a new charge. This is a new charge; it was a snap shot taken at the close; after everything else was all in doubt. They say here and now that no matter whether it is proven or not, whether other judges put the same construction on the law, it shall not be considered by this House. But you will take legislative notice of the debates of the Senate and House; you will take notice of the debates under which this statute was adopted; you will take notice of the action in this House upon the report of its own conference committee, and if you do, can you say that Judge Swayne violated the law to such a degree as to render him criminally responsible and liable to removal from the office he now holds?

The SPEAKER. The time of the gentleman from Iowa has expired.

Mr. GILLET of California. I yield five minutes more to the gentleman from Iowa.

Mr. WM. ALDEN SMITH. I want to ask the gentleman a question.

Mr. LACEY. Very well.

Mr. WM. ALDEN SMITH. The legislative history of that amendment, as I understand the gentleman, discloses the fact that the House insisted upon the provision which now appears, and rejected the provision which qualified it.

Mr. LACEY. And which would have made it perfectly plain and clear.

Mr. WM. ALDEN SMITH. We not only made the law, but we construed it.

Mr. LACEY. We refused to put in the statute that which constitutes the position taken by my friend from Alabama [Mr. Clayton], and with a knowledge of the fact that many judges have been drawing the \$10 a day on the assumption of the law, whether it was a mistaken assumption or not.

Mr. BURLESON. Mr. Speaker, the gentleman from Iowa spoke of a certificate from the Treasury Department. Does this certificate state that any judge has certified for \$10 a day when he has spent only \$1.25?

Mr. LACEY. Oh, no; it could not do that; but the certificates show absolute uniformity in more than half the cases—absolute uniformity—fixing the exact amount at \$10 a day, and that, too, in localities where we all know the current hotel rate is \$3 and \$4 a day. So that, Mr. Speaker, it seems to me that this House is practically precluded by its own action from standing a moment on the first charge. As to the others, I have neither the time, the opportunity, nor the inclination to discuss them. They have been discussed at length. Upon those other propositions the committee is absolutely divided. The very committee of seven that brings in the charge does not come in by a two-thirds vote. There is only a four-sevenths vote, which is two twenty-firsts less than a two-thirds majority, and yet they want to take this case to the Senate of the United States, where we have to convict by a two-thirds vote, and when they could not agree by a two-thirds vote of the committee in framing the charges. [Applause.]

Mr. MANN. Mr. Speaker, the gentleman referred to a decision of the comptroller. I did not quite get what the decision was. May I ask the gentleman whether the decision is law?

Mr. LACEY. Well, it is his construction of the law.

Mr. MANN. Whether it could be printed?

Mr. LACEY. It is printed in the volume which I read from here. He holds that they were not entitled to the \$10 a day—the district judges—and that was before the act of 1896. Before the act of 1896 they might draw more. They might draw \$20 a day, provided they expended it.

Mr. MANN. The gentleman commented upon it to us and I thought possibly it might be printed.

Mr. LACEY. I have no other copy except in this volume, which I will pass to the reporters and let them copy it in my remarks.

The decision referred to by Mr. Lacey is as follows:

TREASURY DEPARTMENT,  
OFFICE OF COMPTROLLER OF THE TREASURY,  
*December 6, 1895.*

SIR: I am in receipt of yours of November 25, inclosing a copy of a letter from United States Circuit Judges Woods, Jenkins, and Showalter, of the seventh circuit, with copies of letters addressed to them from United States District Judges Bunn and Seaman, of the two Wisconsin districts, relating to the payment of the expenses of district judges while holding court outside of their own districts.

The contention of these judges is that when district judges hold court outside of their own districts by order of the circuit judge they are entitled to be paid for their expenses a per diem of \$10, evidenced by their own certificate, and are not required to furnish an itemized statement of their expenses. You ask my decision whether the marshals of the United States are authorized to pay to district judges so holding court \$10 per day upon their own certificates only. For an intelligent answer to this question a review of the legislation in regard to the holding of court by district judges outside of their own districts is necessary.

The act of July 29, 1850 (9 Stat., 442), authorized the circuit judge to designate a district judge to hold court in another district under certain circumstances therein enumerated. Section 5 of said act provided that such district judge "shall be allowed his reasonable expenses of travel to and from and of residence in such other district necessarily incurred by reason of such designation and appointment and his obedience thereto; and such expenses shall, when certified by the clerk and the district attorney of his judicial district within which such services shall have been performed, be paid by the marshal of such district, and allowed him in his accounts with the United States."

It will be noticed that this act provided for the expenses of the judges without limit as to the amount, and provided that such expenses should be evidenced by the certificate of the clerk and district attorney.

Section 3 of the legislative, executive, and judicial appropriation act of March 3, 1871 (16 Stat., 494), provided for the salaries of certain judges of the United States, and further enacted: "And all provisions of law providing for additional compensation or allowance to any judge for traveling expenses are hereby repealed." And further, that district judges holding court outside of their districts should do so "without any other compensation than his (their) regular salary as established by law." This provision clearly repealed the provision of the act of 1850, allowing actual traveling and other expenses of district judges while holding court outside of their districts.

The act of March 5, 1872 (17 Stat., 36) provided that whenever "a district judge from another district shall hold a district or circuit court in the southern district of New York, his expenses, not exceeding \$10 per day, certified by him, shall be paid by the marshal of said district, as a part of the expenses of the court, and be allowed in his account."

By this act not a district judge holding court in the southern district of New York was put upon a different footing from district judges holding courts elsewhere, and payment was authorized to such judges, not of a per diem of \$10, but of their expenses not exceeding \$10 per day, and which expenses should be evidenced by the certificate of the judge.

These various statutes were incorporated into the Revised Statutes as sections 596 and 597, section 596 providing for the designation of district judges to hold court outside their districts and providing that they should do so without any other compensation than their regular salaries, and section 597 providing for the payment of expenses not exceeding \$10 a day, to a district judge holding court in the southern district of New York, upon his certificate.



In the sundry civil appropriation act of March 3, 1881 (21 Stat., 454), the following clause was enacted: "And so much of section 596 of the Revised Statutes as forbids the payment of the expenses of district judges while holding court outside of their districts is hereby repealed." And in the same act specific appropriation was made "for payment of expenses of district judges who may be sent out of their districts in pursuance of law to hold a circuit or district court."

This provision manifestly was enacted to allow to district judges when holding court outside of their districts their actual expenses, which had been previously prohibited but did not reenact the provision in the act of July 29, 1850, which required that these expenses should be evidenced by the certificate of the clerk and district attorney. Had it not been for the prohibition upon the payment of expenses to district judges when holding court outside of their districts, such expenses would probably have been allowable under the well-established rule that where civilian officers or employees of the Government are obliged to travel from the place where their regular duties are performed their actual expenses may be paid. It has always been required that these actual expenses should be itemized and supported by vouchers when the expenses are of such a character that proper vouchers can be obtained, and generally by regulations to that effect prescribed by the various departments, sworn to. When the clause in the act of 1881 allowing expenses to be paid to district judges holding court outside of their districts was enacted, it was construed by the accounting officers as authorizing the payment to these district judges of their actual expenses without limitation as to the amount, and that these expenses should be evidenced in the same manner as the expenses of other civil officers or employees of the Government were required to be evidenced, viz, by an itemized statement supported by vouchers where possible, the provisions of section 597, Revised Statutes, relating to the holding of court in the southern district of New York, both as to the limit of \$10 per day and the manner in which the expenses should be evidenced therein contained, not having been considered applicable to district judges when holding court outside of their districts elsewhere than in the southern district of New York.

That construction has been consistently maintained up to the present time, and in consequence thereof district judges have always been required when holding court outside of their districts, other than in the southern district of New York, to evidence their expenses by an itemized statement, supported by vouchers where possible, and have been allowed such actual expenses even if the same exceeded \$10 per day. As this construction seems to have conformed to the letter of the law and has been consistently followed by the accounting officers ever since its enactment, I see no reason why the construction should be changed so as to allow district judges to receive their actual expenses upon their own certificates only and at the same time to limit those expenses to \$10 per day, such limitation not having been specifically made by Congress. It may well be that Congress intended to limit the expenses of the district judge, while holding court in the southern district of New York, to \$10 per day, for his traveling expenses could not be very great, while it was not intended to limit the expenses of a district judge while holding court outside of his district in many of our Western States, where the actual cost of transportation in many cases would exceed the total amount allowable to him at the rate of \$10 per day in the event that he only held court for a few days consecutively.

No trouble seems to have been experienced in regard to this matter until after the creation of the circuit courts of appeals by the act of March 3, 1891 (26 Stat., 826), which authorized district judges to sit in said court in certain cases, and section 8 of which provided that any justice or judge who "shall attend the circuit court of appeals held at any place other than where he resides shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held his reasonable expenses for travel and attendance, not to exceed \$10 per day." As a result of this enactment district judges when sitting in the circuit court of appeals were allowed their expenses upon their own certificates, but such expenses were limited to \$10 per day. District judges found themselves, therefore, in this position that when they sat in the circuit court of appeals they were entitled to receive their expenses, not exceeding \$10 a day, evidenced by their own certificate; but when they held a circuit or district court outside of their districts they were entitled to their reasonable actual expenses without limit, but which could only be evidenced by an itemized statement, supported by vouchers where possible. No doubt they have been unable to see why such a distinction should be drawn, nor is the comptroller able to see why any such distinction should be drawn; but the distinction seems clearly to have been made by the various enactments above cited, and the comptroller finds himself unable to make any changes in the laws passed by Congress. The remedy lies with Congress.

For the reasons above stated district judges, when holding courts outside of their districts, elsewhere than in the southern district of New York, are not authorized to

be paid \$10 a day upon their certificate, but are authorized to receive actual expenses upon itemized statements supported by vouchers where possible. Whether these statements should be sworn to is a matter for the discretion of the Attorney General, under whose control the appropriation for their payment is placed.

In the letters of Judges Bunn and Seaman it is stated that until recently they were not required to make itemized statements of their expenses when holding court outside of their districts. In this they are mistaken, for the practice of requiring such itemized statements has prevailed, as above stated, since the clause in the act of 1881 was passed, and an examination of the accounts of the marshal for the northern district of Illinois shows such itemized statements, although in one case it appears that Judge Seaman was allowed his expenses upon his certificate, apparently inadvertently, by the clerk who settled the account of the marshal, for that particular certificate was with some twenty other certificates of judges who were sitting in the circuit court of appeals.

#### DIGEST OF THE STATUTES.

The following is the language of the statute which Judge Swayne is charged with violating:

For reasonable expenses for travel and attendance of district judges directed to hold court outside their districts, not to exceed ten dollars per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States. (29 Stat. L., 451, approved June 11, 1896.)

When this law was proposed in the sundry civil bill in 1896, it was passed nearly in the above form in the House. It was amended in the Senate April 24, 1896, on motion of Mr. Allen, of Nebraska, by adding the following:

Which said certificate shall state in all cases that the judge has actually incurred or paid the expense therein stated. (Congressional Record, 54th Cong., 1st sess., p. 4364.)

Mr. Allen said (ib., 4363) that under this form of statute the circuit judges in all instances certified \$10 a day, and offered above amendment to prevent it.

In each subsequent appropriation bill the law was reenacted, as follows:

Of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed ten dollars per day each, etc. (same as 1896). (30 Stat. L., 644, approved July 1, 1898.)

Of reasonable expenses for travel and attendance, etc. (same as 1896). (30 Stat. L., 1116, approved Mar. 3, 1899.)

Of reasonable expenses for travel and attendance, etc. (same as 1896). (31 Stat. L., 641, approved June 6, 1900.)

Of reasonable expenses for travel and attendance, etc. (same as 1896). (31 Stat. L., 1183, approved Mar. 3, 1901.)

Of reasonable, etc. (same as 1896). (32 Stat. L., 476, approved June 28, 1902.)

Of reasonable, etc. (32 Stat. L., 1141, approved Mar. 3, 1903.)

Of reasonable, etc. (same as 1896). (33 Stat. L., 508, approved Apr. 28, 1904.)

The following is the present law as to the courts of appeals:

SEC. 8. That any justice or judge who, in pursuance of the provisions of this act, shall attend the circuit court of appeals held at any place other than where he resides shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held his reasonable expenses for travel and attendance not to exceed ten dollars per day, and such payments shall be allowed the marshal in the settlement of his accounts with the United States. (26 Stat. L., 828, approved Mar. 3, 1891.)

The Revised Statutes of 1873 forbade the payment of expenses of a district judge in holding court outside his district. (Rev. Stat., 596.)

This was repealed March 3, 1881, in sundry civil bill (21 Stat. L., 454, approved Mar. 3, 1881), and the following provision inserted:

For payment of expenses of district judges who may be sent out of their districts in pursuance of law to hold circuit or district court, and for other miscellaneous expenses, three hundred thousand dollars.

This remained the law until the act of 1896 hereinbefore cited.

The following is the exception of the revised Statutes as to New York southern district. (Rev. Stat., 597.)

Whenever a district judge from another district holds a district or circuit court in the southern district of New York, in pursuance of the preceding section, his expenses, not exceeding ten dollars a day, certified by him, shall be paid by the marshal of said district, as a part of the expenses of the court, and shall be allowed in the marshal's account. (Originating in ch. 35, act of Mar. 5, 1872, 17 Stat. L., 66, and put in Rev. Stat. as sec. 597.)

Under the act of 1881, as to expenses of district judges, the following appropriation acts were passed:

For payment of expenses of district judges who may be sent out of their districts in pursuance of law to hold circuit or district court (same as 1881). (22 Stat. L., p. 336, approved Aug. 7, 1882.)

22 Statutes at Large, 661, approved March 3, 1883, was the same as page 336, 1882.

In 23 Statutes at Large, 224, approved July 7, 1884, the verbiage was slightly changed as follows:

Expenses of district judges who may be sent out of their districts to hold court.

23 Statutes at Large, 511, approved March 3, 1885, was the same as 1884.

24 Statutes at Large, 254, approved August 4, 1886, was the same as 1884.

24 Statutes at Large, page 541, was the same as 1884 (March 3, 1885).

25 Statutes at Large, page 545, October 2, 1888, was the same as 1884.

25 Statutes at Large, page 878, March 2, 1889, was the same as 1884.

26 Statutes at Large, page 410, approved August 30, 1890, was the same as 1884.

26 Statutes at Large, 987, approved March 3, 1891, was the same as 1884.

In 27 Statutes at Large, 386, approved August 5, 1892, it was slightly changed again as follows:

Of expenses of district judges to hold court outside of their districts, and judges of the circuit courts of appeals.

27 Statutes at Large, 609, approved March 3, 1893, was the same as 1892.

28 Statutes at Large, 417, approved August 18, 1894, was the same as 1892.

28 Statutes at Large, 910, approved March 2, 1895, was the same as 1892.

Mr. PALMER. Mr. Speaker, I yield five minutes to the gentleman from Tennessee [Mr. Gaines].

Mr. GAINES of Tennessee. Mr. Speaker, I did not hear all of the remarks of the gentleman from Iowa [Mr. Lacey], and I am informed that he did not quote all of the Record touching upon this very

matter, and upon the assumption that he did not quote all of the Record I desire to make a few remarks. I will ask the gentleman whether he read it all?

Mr. LACEY. Oh, no; I had only fifteen minutes and could not do it.

Mr. GAINES of Tennessee. From whom did the gentleman quote?

Mr. LACEY. Senator Allen and Senator Allison.

Mr. GAINES of Tennessee. Why did not the gentleman go a little further?

Mr. LACEY. Oh, the gentleman can go as far as he wishes.

Mr. GAINES of Tennessee. Very well. I read from the Record at page 4363, April 24, 1896:

Mr. ALLISON. Does the Senator [Mr. Allen] believe that any district judge or circuit judge is likely to violate the law by making a false certificate? The Senator must remember that this includes all traveling expenses as well as expenses while at the place of holding court.

Mr. ALLEN. I say some of them do, according to my information. A judge is a human being. He is no more of a man after he becomes a judge than he was at the time he became a judge. If he had frailties at that time, he carries them to the bench with him.

The proposed statute fixes the maximum in these words:

"Of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges."

That carries the implication, which is as clear as language can make it, that he shall not receive \$10 a day unless his actual expenses amount to \$10 a day.

Mr. GRAY. His reasonable expenses.

Mr. ALLEN. His reasonable expenses. Reasonable expenses include hotel bill and railroad fare.

Senator Chandler, in construing this \$10 per day provision, said:

The provision is that the judge shall be paid his reasonable expenses for travel and attendance, not to exceed \$10 per day. The judge of a United States court has to certify that that is an expense; that that is what he has paid out. Does the Senator mean to say that there is a judge anywhere in the United States holding court in that way who if his expenses were \$7 or \$8 or \$5 a day would certify that they were \$10 in order to get the additional pay?

Now, then, Mr. Speaker, Senator Allison further on, at the bottom of the page, went on to say:

The object of the provision, as I stated a while ago to the Senator from Nebraska, is to equalize the judges when they travel outside of their circuits or districts to hold court. If there are abuses of the provision as respects circuit judges (there can not be abuses with respect to district judges), if the circuit judges are in the habit of certifying to more than they ought to certify to, it would be wiser and better to allow the equality to be established, and then let the Judiciary Committee of this body take cognizance of the whole question and make such modification of the statute of 1891 as will cure the defects or the evils which seem to be in the mind of the Senator from Nebraska. I hope that it will be satisfactory to the Senator, and that he will allow the amendment to go in without objecting to it.

Mr. ALLEN. I suggest to the Senator from Iowa the propriety of inserting after the word "judges," in line 21, on page 111, the words "which said certificate shall in all cases contain a statement that expenses therein certified have actually been incurred and paid."

This amendment was adopted, but it was stricken out in conference, because every judge who sits on the bench is there upon his honor and so honorable that when he spends \$1.50 a day he will not certify to \$10 a day.

Mr. Speaker, I now read from the sundry civil report of 1896, prepared by the present Speaker of this House [Mr. Cannon], as follows:

In presenting to the House the bill making appropriations for sundry civil expenses of the Government for the fiscal year 1897, the Committee on Appropriations submit the following in explanation thereof.

In "explanation" thereof, if you please——

The SPEAKER. The time of the gentleman has expired.

Mr. PALMER. I yield five minutes more to the gentleman from Tennessee.

Mr. GAINES of Tennessee. Now listen. Mr. Cannon further said in this report:

The following limitations touching certain branches of the public service for which appropriations are made and not heretofore imposed——

That is, not imposed on district judges——

are recommended in the bill, namely: On page 95 the appropriation for pay of bailiffs and criers and other expenditures of the United States court is made available to pay the reasonable expenses of travel and attendance of district judges directed to hold court outside of their district, not to exceed \$10 per day each, to be paid on written certificates of the judges.

The words in parentheses are in *italics*. The distinguished gentleman who presides over this body, in effect, said: "Gentlemen, there is a penalty already fixed by a criminal statute that makes it a fine for a judge to falsify a certificate to get money from the Government, hence the Allen amendment is unnecessary. Let us not reflect upon the honor of the judges of our great country by adopting this unnecessary amendment;" and it was defeated in conference. Let us keep the judiciary above suspicion, but let the judges, each and all, help to do so. So the conferees did not agree to the Allen amendment.

In substance, Senator Allison said we should not suspect a Federal judge, a man who is sworn to support the Constitution and the laws, which prohibit such acts, will come along and by his false certificate reach a long hand into the Treasury and take a miserable little pittance of \$10 from the Government, when he had only spent a few dollars per day. That is the gist of this whole debate on this subject in the Record. Senator Allison, whom everybody loves, said the judges were too honorable to thus act. That is the short of it. They are too honorable to falsify a certificate.

"Where is the judge who has done it?" the old man said, and the great judge, George Gray, who so long adorned the United States Senate, said that the language means "reasonable expenses." So said in effect Senator Chandler. So said Senator Allen. And I heard the gentleman from Iowa [Mr. Lacey] in his speech compliment Senator Allen as being a great lawyer, and he is a great lawyer, and he said: "We all are human beings when we go on the bench and some of us do not take as much humanity and common decency on the bench as we ought. Let us put it down in black and white that the judge is to certify to the items of his actual expenses—so many miles of travel, so much for hotels, and, if you please, so many cigars, so many cocktails—put down every detail and certify them." But, Mr. Speaker, you then said in reply: "I have put in new restrictions." Here are your own words, "new limitations." The amendment is unnecessary. Those are the words our distinguished Speaker put in his report, which is to be found here in the archives of this House.

We will give, they argued, the district judge who may chance to spend \$10 that which the circuit judges get, coupled with the limitation that the expense must not be over \$10, if at all. Senator Hale and Senator Allison, Mr. Cannon, Gov. Sayers, who was sitting here a while ago, and Mr. Hainer, the Senate and House conferees, said: "Let us not reflect upon the judiciary." Great God! these judges,



they argued, will not, in the face of a criminal statute, certify they have spent \$10 a day when they only spent a dollar and a half. That is the whole contention on this subject, as the Record will show, and this report; but the way my friend from Iowa [Mr. Lacey] read the Record the judgment of these Senators was exactly the other way. [Applause.]

Mr. Speaker, I ask unanimous consent to have the whole of this Allen-Allison-Gray-Chandler debate printed in the Record to-morrow, so we can all read it. I do not want to do anybody an injustice in any way.

The SPEAKER. The gentleman from Tennessee asks unanimous consent to have the debate in the Senate to which he refers printed in the Record as part of his remarks. Is there objection? [After a pause.] The Chair hears none.

The extract referred to is as follows:

Mr. ALLEN. Mr. President, I desire to call the attention of the Senator from Iowa to a fact which came to my knowledge the other day, and it is to the effect that under this law, or laws similar to this which have been passed where Congress allows compensation to judges who hold courts outside of their particular districts, and especially the United States appellate judges, that in all instances they certify to \$10 a day, regardless of the actual expenses to which they are put. The evident policy of the law was to cover the actual expenses of the judges at hotels and for traveling expenses not to exceed \$10 per day.

I have information from a source that I am not permitted to disclose that in many instances where the legitimate expenses and hotel bills are not to exceed three or four dollars a day, where a judge has gone to a city and stayed there perhaps for a month or two months—

Mr. WOLCOTT. We can not hear the Senator.

Mr. ALLEN. In cases where the judge has gone to a place where the court is to be held, and has no expense except the mere expense of hotel bills, remaining there for a month, or, possibly, all winter in some cases, or for several months at least, uniformly he certifies to \$10 a day, which is the full maximum allowed by the law. I call the attention of the Senator from Iowa to this fact, so that this bill may be amended and the law not be abused by the very officer whose duty it is, above all others, to see that the law is observed. This bill provides:

"That no such person shall be employed during vacation; of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges."

There is a maximum fixed. There may be days when \$10 would be required to cover the expenses of the judge, and it would be perfectly proper for him to draw that sum and certify to it; but I submit that it is improper and in violation of the spirit, if not of the language, of the statute that the judge, simply because he has the power to certify, will be enabled to take from the Treasury of the United States \$10 for every day to cover his expenses when his actual expenses do not exceed four or five dollars a day.

It may be a small item; probably it is a small item, but it is not small in so far as it develops a disposition upon the part of high judicial officers of the country to violate the spirit of a law which they themselves are engaged in enforcing against criminals and other violators of the law.

Mr. CHANDLER. Will the Senator from Nebraska allow me to interrupt him?

Mr. ALLEN. Certainly.

Mr. CHANDLER. The provision is that the judge shall be paid his reasonable expenses for travel and attendance, not to exceed \$10 a day. The judge of a United States court has to certify that that is an expense; that that is what he has paid out. Does the Senator mean to say that there is a judge anywhere in the United States holding court in that way who, if his expenses were \$7 or \$8 or \$5 a day, would certify that they were \$10 in order to get the additional money?

Mr. ALLEN. I mean to assert, according to my information, and I look upon it as reliable, and I think inquiry at the Department of Justice would disclose the fact, that there are Federal judges in the United States—there is where they belong—who uniformly certify to \$10. They take the maximum under a certificate covering their expenses.

Mr. GRAY. Do I understand the Senator to say that all the judges certify to \$10 a day?

Mr. ALLEN. Not all. I do not say all. But I say that there are judges who do it—district judges holding, for instance, courts of appeal. Some of them do certify uniformly to \$10 a day and take \$10 a day out of the Government in cases where their legitimate expenses are not, and in the nature of things can not be, to exceed three or four dollars a day.

Mr. CHANDLER. Let me ask the Senator from Nebraska where on this footstool of ours where there is United States jurisdiction a judge going from one district to another can stop at a hotel, get a bedroom and a parlor (because he has to be where the attorneys can call upon him, where he can maintain the dignity and the decency befitting a Federal judge), with board, the poorest board the Senator would be willing to feed a district judge on, for three or four dollars a day?

Mr. ALLEN. It can be done in almost every city and town in this Union.

Mr. CHANDLER. Would the Senator be willing, if he were counsel, to go and wait on a judge holding court and find him living on \$3 a day? What sort of accommodations could he get? He could not for that price get a room big enough to take the Senator in to make his call. I do not think the Senator, who I know is for economy in public affairs, as I am, is disposed to be mean and to cut down the judges under such conditions. I certainly do not think the Senator means to say that there is a single judge in the United States who would make a false certificate for any such purpose.

Mr. ALLEN. If I had a decent-sized room and a very small-sized closet, I could take care of the Senator from New Hampshire and myself. There would be no trouble about that.

Mr. ALLISON. The Senator from Nebraska will observe that the only object of this provision is to place the district judges upon an equality with circuit judges as respects their expenses.

Mr. ALLEN. Yes, sir; I observe that they are put upon an equality. What I am contending for, and what I hope the honorable Senator from Iowa will remedy, is that these men shall not be permitted to violate the law themselves.

Mr. ALLISON. Does the Senator believe that any district judge or circuit judge is likely to violate the law by making a false certificate? The Senator must remember that this includes all traveling expenses as well as expenses while at the place of holding court.

Mr. ALLEN. I hope the Senator from Iowa will not put me in the attitude of making the charge that all Federal judges violate the law, for I do not make it.

Mr. ALLISON. I certainly would not put the Senator in any such attitude.

Mr. ALLEN. I say some of them do, according to my information. A judge is a human being. He is no more of a man after he becomes a judge than he was at the time he became a judge. If he had frailties at that time, he carries them to the bench with him.

The proposed statute fixes the maximum in these words:

"Of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges."

That carries the implication, which is as clear as language can make it, that he shall not receive \$10 a day unless his actual expenses amount to \$10 a day.

Mr. GRAY. His reasonable expenses.

Mr. ALLEN. His reasonable expenses. Reasonable expenses include hotel bill and railroad fare. I do not suppose it includes the purchase of a new suit of clothes or a box of cigars, but the reasonable, ordinary expenses of travel, including hotel bills.

Now, in answer to the honorable Senator from New Hampshire [Mr. Chandler] I wish to state that so far as my section of the country is concerned any district judge, or any other judge, for that matter—any gentleman who wants to be entertained with reasonable liberality and have clean and decent, commodious quarters—can sustain himself at the best class of hotels, with the best class of food and the best class of service, for not to exceed \$2.50 a day. There is no hotel where he will be charged more than that, and he ought to be compelled to take that amount, because it is enough for any decent, respectable man.

Why, under the circumstances, should the judges be permitted to certify—a mere formality—that their expenses have been \$10 a day? I regret very much to feel it my duty to call attention to this matter. It would be much more pleasant to me, especially in view of the fact that I am in trouble here half the time with Democrats and Republicans and skirmishing between lines, trying to establish the Populist Party as the respectable party of this country, to let the matter pass over and say nothing more about it. I may sometimes feel the weight of the remarks I am making when I go into one of

the Federal courts to try a cause. At least if the judge should be against me I should have some suspicion that by something I had said here I had incurred his enmity, especially if the honorable Senator from Iowa concludes to accept my position as right, that the certificate should state that the actual expenses covered by the certificate were incurred and paid by the judge. I hope that will be done.

Mr. ALLISON. The object of the provision, as I stated awhile ago to the Senator from Nebraska, is to equalize the judges when they travel outside of their circuits or districts to hold court. If there are abuses of the provision as respects circuit judges (there can not be abuses with respect to district judges), if the circuit judges are in the habit of certifying to more than they ought to certify to, it would be wiser and better to allow the equality to be established, and then let the Judiciary Committee of this body take cognizance of the whole question, and make such modification of the statute of 1891 as will cure the defect or the evil which seems to be in the mind of the Senator from Nebraska. I hope that will be satisfactory to the Senator, and that he will allow the amendment to go in without objecting to it.

Mr. ALLEN. I suggest to the Senator from Iowa the propriety of inserting, after the word "judges," in line 21, on page 111, the words "which said certificate shall in all cases contain a statement that the expenses therein certified have actually been incurred or paid."

Mr. ALLISON. I think on reflection the Senator from Nebraska will not care to have that amendment inserted in the bill. It is an imputation upon the good faith of the judges, and I should greatly prefer that the Senator would not press the amendment to the amendment.

Mr. ALLEN. I do not myself look upon it as an imputation at all. I dislike very much to disagree with the chairman of the Committee on Appropriations, for which position I have high respect, but there is altogether too much of a disposition to take money from this Government upon the thought that the man who occupies the position holds a very high official position, and therefore it would be wrong to impugn either his motives or his purpose. I do not regard this as an imputation upon the character of the judges. I do not think any honest, conscientious man can object to it. I am speaking now of the judges. I do not think any clear-minded man can object to it. It does not require the specification or itemizing of his expenses or anything of the kind. It simply requires that he shall state in the certificate that the amount has actually been incurred or paid by him. What can there be wrong about that? I do not see wherein it is wrong. Wherever a man draws mileage he is required to certify under oath what he has paid. Marshals are required to certify and so are bailiffs, and the fact that one is a judicial officer and the other an executive officer, it occurs to me, should make no difference.

The disposition which has been fallen into in our Government, and especially in certain branches, that some man is to be offended by legislation, and therefore the disposition to trust too much to his sense of honor rather than to trust it to statute, has brought about much of the extravagance in this country. Take, for instance, the case which the honorable Senator from New Hampshire [Mr. Chandler] spoke of a moment ago. Here we have in every Federal court in the United States 23 jurymen summoned at every term of court. We could very well dispense with 7 of them and come within the common-law rule as to the grand jury. The grand jury, according to common law, can not be less than 16 nor more than 23, so that 12 shall always constitute a majority. What objection is there or what objection has there been in the last twenty-five or thirty years to cutting off 7 of those grand jurymen at each term of court? They are as worthless as the fifth wheel to a wagon and are a great source of expense. Senators talk about expenses increasing constantly, and they are increasing, to the great detriment of the debt-ridden and debt-burdened people. Why not take hold of this matter at a sensible and reasonable point and cut off expense? If we keep up the work of paring off a little here and a little there, where the expense is useless, in the course of time the expenditures will be brought down to a reasonable sum.

Mr. ALLISON. I will say to the Senator that I will agree, so far as I am concerned, to accept his amendment to the amendment.

Mr. ALLEN. I hope the Senator will not only yield at this time, as I feel he ought to do, but that he will not be in a yielding mood in the committee of conference.

Mr. ALLISON. That is rather anticipating what may be done hereafter, I suggest to the Senator. I always insist upon every amendment which the Senate insists upon.

Mr. ALLEN. I beg the honorable Senator's pardon for the remark, but I have been the victim, four or five times, of conference committees, and a burnt child always takes warning.

I move, then, to insert after the word "judges," in line 21, page 111, the words:

"Which said certificate shall state in all cases that the judge has actually incurred or paid the expense therein stated."

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Nebraska to the amendment of the committee.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

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HOUSE OF REPRESENTATIVES, *January 17, 1905.*

[Congressional Record, volume 39, part 1, pages 972-993.]

Mr. GILLETT of California. Mr. Speaker, I yield to the gentleman from Iowa [Mr. Lacey] 10 minutes' time.

Mr. PALMER. Mr. Speaker, I would like, before the debate begins, to ask the gentleman on the other side if we can not take a vote on this question at 4 o'clock this afternoon. In my judgment the mind of the Members of the House has been practically made up, and there will not be very much change made by the debate should we debate here for a month. I am willing to take the vote now, and be satisfied to ask unanimous consent to have the vote taken this afternoon.

Mr. GILLETT of California. Mr. Speaker, it seems to me from the way in which this matter has been arranged, and from the fact that certain gentlemen have prepared to make speeches, the arrangement suggested by the gentleman from Pennsylvania [Mr. Palmer] would absolutely preclude them from doing so. I understood when this debate was started it was to be absolutely fair and unlimited, and I think by to-morrow afternoon we can close this matter, and in the meantime give the gentlemen who have made preparation opportunity to be heard on matters that have not yet been entirely and fully discussed.

Mr. PALMER. If there is objection, of course I can not get unanimous consent. The responsibility is on these gentlemen to continue this debate, but I am ready for a vote.

Mr. GILLETT of California. Mr. Speaker, I object.

The SPEAKER. Does the gentleman from Pennsylvania [Mr. Palmer] yield to the gentleman from California [Mr. Gillett], who proposes, as the Chair caught it, to make an agreement to close the debate and vote at a certain hour to-morrow?

Mr. GILLETT of California. Yes, sir.

Mr. PALMER. Mr. Speaker, to put the matter in form, I ask unanimous consent of the House to vote on this proposition on these articles at 4 o'clock this afternoon.

Mr. GILLETT of California. Mr. Speaker, I object.

The SPEAKER. The Chair understood the gentleman from California [Mr. Gillett] to propose a counter proposition to the effect that we now fix to-morrow for a vote.

Mr. PALMER. I think that "sufficient unto the day is the evil thereof." If it is to go over until to-morrow, when to-morrow comes we will try and agree.

Mr. GILLETT of California. Mr. Speaker, I ask unanimous consent that the vote be taken on this matter at 3.30 o'clock p. m. to-morrow.

The SPEAKER. The gentleman from California [Mr. Gillett] asks unanimous consent that to-morrow at 3.30 o'clock p. m. a vote be taken upon the articles of impeachment.

Mr. MACON. Mr. Speaker, I object.

The SPEAKER. The gentleman from New York [Mr. Cockran] is recognized.



Mr. COCKRAN of New York. Mr. Speaker, I wished to put a parliamentary inquiry, but the question is now withdrawn and that disposed of it.

Mr. CLAYTON. Mr. Speaker, in behalf of the majority of the committee that brought in these articles I hope the gentleman from Arkansas [Mr. Macon] will withdraw his objection.

Mr. MACON. Will you allow me to say this? I only objected as my friend the gentleman from California is endeavoring to run this thing himself, and whenever I find a man trying to do that, I nearly always object.

Mr. CLAYTON. That is merely a personal matter, and I hope that the gentleman will withdraw that, and let us dispose of some public business.

The SPEAKER. Is there objection?

Mr. COCKRAN of New York. I rise to a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. COCKRAN of New York. By giving unanimous consent to the request of the gentleman from California, the House does not surrender the right to vote on each of these articles separately, does it?

The SPEAKER. Of course not. All rights touching that matter will be preserved, unless there is unanimous consent, as to how the vote shall be taken.

Mr. PALMER. In order to facilitate business, I will say I will join with this request of the gentleman from California that we begin voting to-morrow at half past three.

The SPEAKER. Is there objection?

Mr. NEVIN. Mr. Speaker, what is the proposition?

The SPEAKER. That the voting begin on the articles of impeachment to-morrow at half past three o'clock. Is there objection? [After a pause.] The Chair hears none. The gentleman from Iowa is recognized.

Mr. LACEY. Mr. Speaker, just before adjournment last evening I had an opportunity to read to this House the debate in the Senate when this proposition (the \$10 law) was first adopted. In 1898 the Committee of Appropriations put the same provision in an appropriation bill, and then there was debate in the House, to which I wish to call the attention of this body. The same provision was put in the sundry civil bill, and it was debated at some length. I will incorporate in my remarks what was said by Mr. Underwood and by Mr. Cannon in reference thereto. I will call the attention of the House to Mr. Underwood's statement on page 2283, of the Fifty-fifth Congress, second session. He says:

Mr. UNDERWOOD. Mr. Chairman, on Saturday last I raised the point of order to that part of the sundry civil bill on page 104, that comes in after the word "*Provided*," down to the end of line 22. This provision of the sundry civil bill refers to section 715 of the Revised Statutes, that reads as follows:

"Sec. 715. The circuit and district courts may appoint criers for their courts, to be allowed the sum of \$2 per day, and the marshals may appoint such a number of persons, not exceeding five, as the judges of their respective courts may determine, to attend upon the grand and other juries, and for other necessary purposes, who shall be allowed for their services the sum of \$2 per day, to be paid by and included in the accounts of the marshal, out of any money of the United States in his hands. Such compensation shall be paid only for actual attendance, and, when both courts are in session at the same time, only for attendance on one court."

Now, this section in the bill very materially changes the provisions of section 715 of the Revised Statutes. In the first place, it provides a compensation of \$10 a day to the district judges during the time they are traveling from their homes to the places



where they hold extra courts. The statute already gives them \$10 a day compensation during the time they are holding courts, but this gives them an additional compensation of \$10 a day while traveling back and forth.

If any gentleman has made up his mind to vote for the impeachment of Judge Swayne on the \$10-a-day proposition, he should do it with a full knowledge of what took place in this House in 1898, when the same provision was put into the appropriation bill, two years following the adoption of the existing law.

• Mr. Underwood continues:

Now, these judges receive \$5,000 a year salary from the United States, and the law provides for their being paid mileage and traveling expenses. So that I see no reason why their compensation or salary should be increased in this way.

Mr. CANNON. If my friend will allow me.

Mr. UNDERWOOD. Yes.

Mr. CANNON. It seems to me that he has got his point of order to the whole of the section, from line 5 to line 20, inclusive.

Mr. UNDERWOOD. I have made it from line 7 to line 22, inclusive. After the word "*Provided*," on line 7, down to the end of the paragraph.

Mr. CANNON. Now, from line 7 to 10, it seems to me that has nothing to do with the judges, but is for the fees of the criers, and in the shape of a limitation.

Mr. UNDERWOOD. I beg my friend's pardon. I do not think it is a limitation anywhere. I think it extends the amount of fees that shall be paid in the United States courts all along the line.

Mr. CANNON. But does not section 715—I want to ask as a question of fact—apply to criers?

Mr. UNDERWOOD. Section 715 applies to criers, and is a limitation. This is an extension.

Mr. CANNON. Lines 7 to 10 provide that "all persons employed under section 715 of the Revised Statutes shall be deemed to be in actual attendance when they attend upon the orders of the court."

Mr. UNDERWOOD. Lines 5, 6, and 7 provide for the pay of the bailiffs and criers, not exceeding three bailiffs and one crier in each court. I have no objection to that.

Mr. CANNON. I think my friend's point of order should be made from line 10, "*And provided further*"——

Mr. UNDERWOOD. The language of lines 7 to 10 is already in the statute. The lines that they shall be paid only when in actual attendance are already in there. There is no necessity for reenacting it.

Mr. CANNON. My friend does not desire to strike out from line 5 to 10, inclusive, down to where the word "courts" occurs in line 10. You make the point of order commencing in line 10 after "*Provided further*," and how far do you go?

Mr. UNDERWOOD. In stating the case I went down to the end of line 22, but I see that line 22 carries the appropriation, so I have no point of order to strike that out.

Mr. SHAFROTH. Why would it not be well to make the point of order only after line 11, so as to include "no such person shall be employed during vacation?" That is a wise limitation, it seems to me.

Mr. UNDERWOOD. The statute already contemplates that, because the statute says that it shall not be paid only for actual attendance upon the courts, and a judge can not attend on a court in vacation.

Mr. CANNON. My friend from Alabama is after the \$10 a day to cover the expenses of traveling and attendance of the district judge when attending district courts——

Mr. UNDERWOOD. As I understand, the judge gets \$10 a day after he gets to the place where he is going to hold the court.

Mr. CANNON. Not the district judge, but the circuit judges.

Mr. UNDERWOOD. When a new district judge is sent to hold court when another judge is sick, he gets, under the law, \$10 a day.

Mr. CANNON. I do not so understand it. Let me give my understanding, so as to get the exact difference between us. I understand the district judge gets his \$5,000 a year, if that is it——

Mr. UNDERWOOD. Yes.

Mr. CANNON. When he goes outside to hold court, he does not get anything.

Mr. UNDERWOOD. My friend from Illinois, I think, is mistaken. When he goes to attend court he gets \$10 a day compensation for holding that court during the days he is there, and I think that is sufficient, for he already gets \$5,000 a year, and to pay him \$10 per day while at court will more than cover his expenses, and it is sufficient compensation without giving him the additional amount in this bill.

Mr. CANNON. Commencing on line 16, "expenses of judges of the circuit courts of appeals"——

Mr. UNDERWOOD. That excepts the circuit court judges, and they would not receive it anyway, for it is their duty now.

Mr. CANNON. I understand when the circuit court is held away from the residence of one of the circuit judges—I mean the appellate court—they get \$10 a day.

Mr. UNDERWOOD. I do not so understand it if it is within the circuit of the judge.

Mr. CANNON. Yes; if it is away from the place of his residence. The truth is, if there is any abuse it is as to the judges that perform appellate duty. Two of them always are away from their homes. They get their full salary and then \$10 a day besides, whereas, it seems to me, there is no abuse as to the district judge, because he only goes away on special occasions and ought to have \$10 a day.

Mr. UNDERWOOD. My friend and I do not agree. I insist that the law is that when he gets to the court outside of his district that he is going to hold he gets his \$10 a day. This proposes to give him \$10 a day during the time he is traveling.

Mr. CONNOLLY. This provision in the bill is in precisely the same language as the law stands to-day. There is no change. Here is the law as it was passed by the last Congress:

*"Provided further, That no such person shall be employed during vacation; of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals; of meals and lodgings for jurors in United States cases, and of bailiffs in attendance upon the same, when ordered by the court; and of compensation for jury commissioners, \$5 per day, not exceeding three days for any one term of court."*

Mr. UNDERWOOD. Does the gentleman say that became a law in the last Congress?

Mr. CONNOLLY. That is the law. Let me say, the act of March 3, 1891, provided for the creation of the court of appeals and for the payment of an additional circuit judge in each judicial circuit, provided that where the judges attended that court away from their places of residence they should be entitled to compensation, and ever since then the law has made appropriation to carry out the letter of the law creating the circuit court of appeals. I investigated that matter myself at the Department of Justice this morning, and spent an hour there with the officials that have the accounts under their supervision, and I find that the law has been so since the circuit court of appeals was established.

Mr. UNDERWOOD. I looked up the law in the Revised Statutes. I will say candidly that I did not look at the acts of the last Congress, and, if the act was passed by the last Congress, then I may be in error.

Mr. CONNOLLY. It was enacted before the last Congress, but how long ago I do not remember; I think probably about 1891, the time of the creation of the court of appeals.

Mr. POWERS. If I understand the gentleman from Alabama [Mr. Underwood] correctly, his criticism applies to this allowance to the district judges when they are called away from their districts to attend court?

Mr. UNDERWOOD. Yes, sir.

Mr. POWERS. For the information of the gentleman, let me say that for more than 20 or 25 years this statute has been in force. Many years ago the language of the statute relating to allowances of this kind was that the judges should be allowed their "reasonable expenses."

That wide latitude of language was greatly abused. Sometimes the judges charged as high as \$40 a day. For that reason Congress cut down the allowance to \$10 a day and made it apply in terms both to travel and to attendance upon court. The object of the allowance was to indemnify the judges for their expenses in leaving home, and included, of course, expenses of transportation as well as expenses while attending court. Our district judge in the State of Vermont does more work probably in the city of New York than he does in our State. When he leaves home for the purpose of holding court in New York he is allowed \$10 a day from the time when he leaves until he returns, the allowance of \$10 covering his transportation expenses and his expenses while in New York. As the gentleman will readily see, the allowance is not a very liberal one.

Mr. UNDERWOOD. As I understand, the law at present does not apply to the time taken up by the judge in traveling from his home to the place where he is going to hold court.

Mr. POWERS. Oh, yes, it does. The language of the act is "expenses for travel and attendance not to exceed \$10 per day;" that is, \$10 per day for traveling or \$10 per day while in attendance at court.

Mr. UNDERWOOD. I understand that such is the provision of this bill; but I do not understand that it is the existing law.

Mr. POWERS. It has been the law in this same form for a great many years.

Mr. UNDERWOOD. The gentleman from Illinois [Mr. Connolly] and the gentleman from Vermont [Mr. Powers] insist that this provision is now existing law as passed by the last Congress. I therefore wish to ask the gentleman from Illinois [Mr. Cannon] why the provision has been incorporated in this bill at this time?

Mr. CANNON. I will tell the gentleman exactly how I understand this matter, and I want to be entirely frank with him and the Committee of the Whole.

Ten dollars a day is the allowance now for travel and expenses to the circuit judges. When one of these judges does appellate duty away from home, he certifies his account for expenses upon the basis of \$10 a day. And that is right enough. When a circuit judge of Indiana or the southern district of Illinois goes to Chicago for the purpose of holding court (and there is work enough there for three judges), all he has to do is to certify his account for expenses at the rate of \$10 a day, and upon his certificate the allowance is made. But this provision of the existing law does not apply to a district judge. He must make out a detailed account of his expenses. If, for instance, he pays 10 cents for blacking his boots, or if he buys a breakfast at a restaurant for 50 cents or a dollar, he must include such items in the detailed statement of his expenses.

That statement is sent down here and must pass the approval of the accounting officers of the Treasury, who must decide as best they can whether the charges are reasonable. Now, the provision in this bill, as we have reported it, will allow these district judges \$10 a day upon their certificates in the same way that the circuit judges get their allowances (which we can not prevent them from getting) at the rate of \$10 per day. If this provision goes out of the bill, these district judges must continue to render an account of expenses in detail. That is the state of the case as I understand it, and I think I understand all there is in it.

Mr. SHAFROTH. And the effect of allowing these judges \$10 a day will be to save money to the Treasury.

Mr. CANNON. In effect it does that, because when one of these judges is away from home, holding court in Chicago or New York City or Dallas or anywhere else outside of his district, an allowance of \$10 a day for expenses is not extravagant.

Mr. UNDERWOOD. Upon the statement which the gentleman from Illinois now makes, he is probably right, so far as that matter is concerned; but the further provision in this paragraph, in the language "of meals and lodgings for jurors in United States cases," is not embraced in the present law, I know.

Mr. LIVINGSTON. Permit me to inquire of the gentleman from Iowa, just there before he goes further, was not the contention of Mr. Cannon of Illinois simply this: That it was a change from allowing an itemized account as theretofore, and a certificate from the judge?

Mr. LACEY. That is not the point.

Mr. LIVINGSTON. The point was that they had not rendered a certificate theretofore, but had to make an itemized account, and that is all there is in that.

Mr. LACEY. That is not all there is in it, as the gentleman will find if he will simply read all this debate that then took place. The proposition as originally gave \$10 a day to the circuit judges, and the chairman of the Committee on Appropriations, Mr. Cannon of Illinois, said that the same allowance ought to be given to the district judges then. [Reading:]

Mr. CANNON. No, it is not; but appropriations for that purpose have been made time out of mind, because of the necessity of making provision for such expenses. I am reminded of the fact that this matter was especially brought to the attention of the Committee on Appropriations and the Committee of the Whole House five or six years ago, and upon the necessity of such an appropriation being shown it went in the bill. In reporting such a provision in the present bill your committee has simply followed the precedents. I think a point of order would lie to the clause "of meals and lodgings for jurors in United States cases." But the gentleman knows what that means. In certain protracted cases, where you have to keep the jury together, they must be fed and lodged.

Mr. UNDERWOOD. The Judiciary Committee, in connection with a bill before them, have considered the very proposition put in here. I think there ought to be some provision made as to the feeding of jurors in Government cases. But there is no limitation upon the provision here. It leaves it absolutely within the control of the judge. I think it is better to put a bill through Congress providing for the feeding of these jurors,

which bill has been carefully considered by the Judiciary Committee, than it is to put through a loose provision in this way.

Mr. CANNON. Then there must be an appropriation if the bill is put through. Now, if my friend could secure the passage of the bill this appropriation would only be available according to the terms of the bill that would be passed.

Mr. UNDERWOOD. But I do not think we ought to pass laws that will leave it entirely to the discretion of the Treasury Department and of the judges to construe how and when these jurors shall be fed.

Mr. CANNON. If my friend wants to apply his point of order to the meals and lodgings of jurors in United States cases, of course the provision will go out.

Mr. UNDERWOOD. I shall be compelled to insist on that portion of it. Now, as to this provision:

"And of bailiffs in attendance upon the same, and of the compensation of jury commissioners—"

I will say that, as I understand it, the United States Government has been to no expense concerning jury commissioners heretofore.

Mr. CANNON. Oh, yes; that is provided for by law, and has been in ever since jury commissioners were authorized, I am informed.

Mr. DOCKERY. I desire to ask the gentleman whether he has made——

Mr. CANNON. The gentleman's point of order would run to these words, commencing in line 17:

"Of meals and lodgings for jurors in United States cases, and of bailiffs in attendance upon the same, when ordered by the court."

It has been called to my attention in reference to this paragraph——

The CHAIRMAN. Does the gentleman from Alabama make a point of order on that whole paragraph?

Mr. UNDERWOOD. The first provision does not limit this payment to the judges of \$10 a day to the time they are actually holding court. Now, if the gentleman from Illinois will amend that part of the provision so that it shall apply to the judges, so that it shall only pay them \$10 a day on the days they are actually holding court, I will withdraw the point of order.

Mr. CANNON. Well, I think it ought to so apply. I think the accounting officers would so construe it; but I have no objection to its going in, if the gentleman desires.

Mr. UNDERWOOD. Then, Mr. Chairman, as to that part of the section, from line 7 down to the word "appeals," I move to amend it by adding that compensation shall be allowed to such judges only when the court is in actual session.

Mr. DOCKERY. You ought to use some more specific language than that.

Mr. HULL. Make it "in actual attendance."

Mr. CANNON. We can agree on that, I think.

Mr. QUIGG. Mr. Chairman, a parliamentary inquiry. I want to know what is the status of this proposition? Is there a point of order pending?

The CHAIRMAN. When the matter is settled by the gentleman from Alabama as he desires to present it, it will be reported by the Clerk.

Mr. CANNON. I suppose the shorter way to do it, really——

Mr. DOCKERY. Let me suggest to the gentleman from Alabama, and the gentleman from Illinois, to insert in line 14, page 104, after the word "each," the words:

"Not to exceed \$10 per day each, during the time the court is in actual session."

Then finally they adopted the law for 1898 exactly as it was in 1896. The fact, then, is simply this, that the Senate had debated the proposition in 1896, the House debated it in 1898, and it was stated in the open House by the chairman of the Committee on Appropriations that it was a rate of \$10 a day.

Now the House proposes to say that anyone who drew that money in accordance with the understanding as stated by the chairman of the Committee on Appropriations is a criminal and ought to be impeached at the bar of the Senate of the United States. We can see very easily why the committee would never have done this if they had investigated it, but at the close of the contest in the Committee on the Judiciary this matter was brought forward as an entirely new item. The committee declined to investigate it, declined to allow any testimony to go in as to what the actual facts were and as to the construction put upon the law, and brought in the articles of impeachment, thus securing a majority of that committee on this one



charge, which they never would have done if they had fully understood it, if they had examined the debates, if they had examined the legislative history of the original statute and the universal, or well-nigh universal, usage of the various judges in the construction of this law

Now, this House does not want to place itself in an absurd attitude before the Senate. We do not want to go there with the charge that the judge had shown himself a criminal by doing that which we knew that he and others were doing when we absolutely refused to amend the law so as to prevent it. Therefore this first paragraph of the charges should go out and the second paragraph, which is upon the same subject, should likewise be voted down

Mr. Speaker, I will ask that the full debate on the occasion to which I have already referred be printed in the Record.

Mr. WILLIAMS of Mississippi. Will the gentleman at the same time print the statute?

Mr. LACEY. The statute is in the debate, word for word.

Mr. WILLIAMS of Mississippi. I should like to see it go side by side with what he is now trying to impress upon the country as the construction of the statute.

Mr. LACEY. The statute is in the debate and is going to be printed.

Mr. WILLIAMS of Mississippi. I understand that, but if the gentleman is going to ask unanimous consent I am compelled to ask that he print the statute also.

Mr. LACEY. I printed it yesterday.

Mr. WILLIAMS of Mississippi. I wish them both to go in together in deadly parallel with what the gentleman has just said.

Mr. LACEY. Well, there is no deadly parallel. It is merely printing the statute twice, once as it was in 1896 and next as it was when we again passed it in 1898. They are as much alike each time as two peas. There is not even a comma difference.

Mr. WILLIAMS of Mississippi. The gentleman, however, is trying to convey to the country a construction of the statute which the language of the statute will not bear.

Mr. LACEY. No; that is not the question at all.

Mr. WILLIAMS of Mississippi. And he is quoting the gentleman from Illinois [Mr. Cannon] and the gentleman from Alabama [Mr. Underwood] in their notions of what the statute meant.

Mr. LACEY. Very well.

Mr. WILLIAMS of Mississippi. Now, I merely ask that the statute itself shall go side by side with the construction of their notions

Mr. LACEY. Certainly; I will do that, with pleasure, because without the statute my remarks would cut no figure whatever. The fact was that the same identical statute, copied out of the act of 1896, was put in the act of 1898, and it was stated, as I have read, what construction was being put upon it by the judges, and the gentleman from Alabama [Mr. Underwood] only proposed to change that clause so as to provide that the per diem should be limited to the number of days that they actually held court, which would cut out the time occupied in coming and going. That afterwards was stricken out on the point of order as new legislation

The SPEAKER. The time of the gentleman from Iowa has expired.

Mr. PALMER. I yield to the gentleman three minutes for the pur-



pose of answering an inquiry which my colleague [Mr. Olmsted] desires to make.

The SPEAKER. The Chair desires to be advised. The gentleman from Iowa made a request for unanimous consent.

Mr LACEY. I want to print the full debate on the occasion I referred to.

The SPEAKER. Is there objection?

Mr WILLIAMS of Mississippi. I said I would object unless the gentleman would print the statute side by side with the debate.

Mr. LACEY. I will certainly print the statute. It has already been printed, but I will print it twice, in parallel columns, as follows:

## THE ACT OF 1896.

Reasonable expenses of travel and attendance of district judges directed to hold court outside their districts, not to exceed \$10 per day each, to be paid on written certificate of the judges, and such payment shall be allowed to the marshal in the settlement of his accounts with the United States.

## THE ACT OF 1898.

Reasonable expenses of travel and attendance of district judges directed to hold court outside their districts, not to exceed \$10 per day each, to be paid on written certificate of the judges, and such payment shall be allowed to the marshal in the settlement of his accounts with the United States.

Mr. WILLIAMS of Mississippi. The gentleman consents to do that, and therefore I do not object.

The SPEAKER. Is there objection?

There was no objection.

Mr. LACEY. I have three minutes more time, and I yield to the gentleman from Pennsylvania [Mr. Olmsted] for a question.

Mr. OLMSTED. I want to ask the gentleman from Iowa if he understands that Judge Swayne did claim this compensation or allowance upon a construction of the statute? And I call his attention to the certificate, or what purports to be a copy of Judge Swayne's certificate, at the bottom of page 1 in this report containing the articles of impeachment, from which it appears that he certified—now this is quoted:

That my reasonable expenses for travel and attendance amounted to the sum of \$230.

That is not at a rate per day, but he certifies that his actual expenses were that much.

Mr. LACEY. What Judge Swayne claims does not appear, because he was not permitted to make a showing before the committee. What he claimed in the certificate, of course, shows for itself. That is a printed form of certificate that was signed by every judge who drew \$10 a day, signed by the various circuit judges as referred to by the chairman of the Committee on Appropriations in the debate.

Mr. OLMSTED. He says only "my actual expenses."

Mr. LACEY. Ten dollars a day for 23 days is \$230. Reasonable expenses—not actual expenses.

Mr. SHERLEY. Will the gentleman from Iowa permit a question?

Mr. LACEY. Certainly.

Mr. SHERLEY. Does not the gentleman know that Judge Swayne never offered to testify as to his construction of the statute that it entitled him to \$10 a day?

Mr. LACEY. I know that he did a good deal better; he questioned the Treasury expert and offered proof by that expert, a disinterested

witness, that the construction he put upon it was the construction that was usual, and I know that the committee refused to permit him to do that, and I say that was not right. It was a mistake on the part of the committee; they should have given him an opportunity to prove it by other witnesses rather than by himself.

Mr. SHERLEY. Will the gentleman permit another suggestion?

Mr. LACEY. Yes, sir.

Mr. SHERLEY. Does not the gentleman know as a lawyer that there could not be introduced this other evidence of what other judges did until a basis for it had been made by a statement that that was the construction of Judge Swayne?

Mr. LACEY. The basis of it was made by counsel for Judge Swayne. He said he offered to prove the construction put upon this law by other judges, and thereupon the chairman of the committee at once informed him that he would not be permitted to do it; that they would not permit him to go into that question.

Mr. PALMER. Let me ask the gentleman from Iowa if the Committee on Appropriations meant that this should be a lump sum covering all expenses of travel and attendance, why did not they say so? Why did they adopt the most inapt language they possibly could have taken? Why did they say he shall have for expenses, travel, and attendance not to exceed \$10 a day? Why not "in lieu of all expenses, travel, and attendance he shall have \$10 a day?"

Mr. LACEY. That would have been a good idea. That proposition was made by the Senate of the United States. The Senate brought in an amendment exactly to that effect. This House—the gentleman from Pennsylvania was not then a Member—refused to put any such provision in the statute.

Mr. PALMER. Does the gentleman mean the Allen amendment?

Mr. LACEY. Yes.

Mr. PALMER. The gentleman is mistaken; the Allen amendment did not do any such thing.

Mr. LACEY. The gentleman from Pennsylvania will have plenty of time to explain, and when he does explain I will ask him to explain why the committee did not give an opportunity to Judge Swayne to explain how it came about that he drew \$10 a day.

The SPEAKER. The time of the gentleman from Iowa has expired.

Mr. GILLET of California. Mr. Speaker, how does the time stand?

The SPEAKER. The majority has had five minutes more than the minority.

Mr. GILLET of California. I now yield 30 minutes to the gentleman from Ohio [Mr. Grosvenor].

Mr. GROSVENOR. Mr. Speaker, I trust that at the end of the brief time that has been assigned to me I may retire from this discussion with no damage done to whatever position I may occupy as a lawyer in the estimation of this House. I have never in the same space of time been so shocked and so doubtful of the high character of the profession of which I am proud to be a member as I have been at some of the exhibitions of bad temper and bad legal proposition that have been made to this House. Gentlemen who have argued for the persecution have given out in advance that there was nothing to consider, so far as facts are concerned, but if there is anything to consider, it is bound up in the printed record in this case.

And yet I submit to the House of Representatives here assembled if nine-tenths of the argument has not been based on matters wholly dehors the record in this case. Let me give you an illustration. One of the gentlemen makes this statement:

The track of this man since the time he was appointed a judge in Florida down to this date is spread all over with bankruptcies, scandals, and suicides. I believe he has not a friend on earth in the northern district of Florida. The strong witnesses against him were of his own political party. It is not for one offense nor for two offenses that the people engaged upon the task of impeaching a judge. It is long; it is tedious; it is uncertain, and if it fails, then those who undertake it are in the jaws of the lion. Therefore it is not the first nor the second nor for many subsequent offenses that the judge is impeached.

Now, there is a statement that comes to the House of Representatives totally, absolutely unsupported by any evidence in this case. He says that this persecuted individual had no friends in Florida. The record shows that every lawyer of respectability, so far as I am personally acquainted in that State, have at one time or another signed strong testimonials as to the efficiency, competency, and credit of this judge. If not all, then certainly a great many of them. Not only so, but they have asked the President of the United States to appoint him, not, as the gentleman from Pennsylvania said, an appointment that would get rid of him, but to give him an appointment that would put him in the court of appeals to review the judgment of the Democratic judge that was forced upon Florida some years ago.

I have here—and I shall put them into my remarks, if there be no objection—a long list of distinguished gentlemen who have testified on their oaths as members of the bar, for when a lawyer puts his name to the recommendation of a judge it is the oath of a man, and if he lied about it then he shall not be heard to contradict his statement now.

I copy from the record in this case:

NO. 214 WEST WASHINGTON SQUARE,  
Philadelphia, November 18, 1897.

HIS EXCELLENCY WILLIAM MCKINLEY,  
*President of the United States.*

MR. PRESIDENT: It gives me very great pleasure to unite with the many friends of Hon. Charles Swayne, of Florida, in warmly recommending him for appointment to the Supreme Court of the United States.

Judge Swayne has for many years administered justice not only in Florida but by assignment in the United States courts of Louisiana and Texas.

He has established a reputation for industry, integrity, learning, and all the virtues which should adorn the bench. His patriotism and courage are undoubted. You may rely upon it that his appointment would reflect great credit upon you and on the judiciary.

With highest regard, I have the honor to be, your most obedient servant,

F. CARROLL BREWSTER.

SUPREME COURT OF PENNSYLVANIA, JUDGES' CHAMBERS,  
Philadelphia, November 19, 1897.

THE PRESIDENT.

SIR: Permit me to suggest the appointment of Hon. Charles Swayne as a justice of the Supreme Court of the United States.

Judge Swayne's service in the northern district of Florida, and in other districts by assignment, has met the approval of the profession of the whole country, and has shown him to be learned, able, and safe.

Respectfully,

D. NEWLIN FELL.

ORPHANS' COURT,  
Philadelphia, November 20, 1897.

Hon. WILLIAM MCKINLEY, *President.*

DEAR SIR: In the matter of appointment of a successor to Mr. Justice Field upon the bench of the Supreme Court of the United States, I beg to commend to your favorable consideration the application on behalf of the Hon. Charles Swayne, now judge of the United States courts of Florida, fifth circuit. Prior to his judicial service Judge Swayne was a member of the bar of Philadelphia, in excellent repute professionally and otherwise.

In his subsequent career he has shown in a marked degree the qualities of an able jurist, and his abilities have been tested and acknowledged by his frequent assignments to the circuit and district courts of States outside of Florida. I am able to speak with confidence of Judge Swayne's fitness for the office from personal knowledge and observation.

Yours, very respectfully,

W. N. ASHMAN,  
*Judge of Orphans' Court.*

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OFFICE OF UNITED STATES DISTRICT ATTORNEY,  
SOUTHERN DISTRICT OF FLORIDA,  
Jacksonville, Fla., November 26, 1897.

The PRESIDENT, *Washington, D. C.:*

It is currently reported that a vacancy will soon occur upon the Supreme Bench, in which event I beg to call your attention to the claims of Hon. Charles Swayne, at present judge of the northern district of Florida. I have known him for many years, and can testify to his learning and ability as a lawyer. I have seen a great deal of him upon the bench under the most trying circumstances, and he has always had the courage to discharge his duties faithfully, fearlessly, and impartially. His private life is above reproach, and I believe that his appointment would secure not only an able and fearless jurist, but give general satisfaction.

Very respectfully,

J. N. STRIPLING.

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OFFICE OF UNITED STATES ATTORNEY,  
NORTHERN DISTRICT OF TEXAS,  
Dallas, Tex., November 22, 1897.

Hon. WILLIAM MCKINLEY, *President.*

SIR: Learning that the friends of Judge Charles Swayne, of Florida, will make an effort to secure his appointment to fill the vacancy which will probably soon occur on the Supreme Court bench, it affords me pleasure to add my indorsement.

I have for two years constantly practiced in the courts over which Judge Swayne presided and I know him well.

His private life is pure, and as a lawyer and judge his ability can not be questioned.

Very respectfully,

W. O. HAMILTON,  
*United States Attorney, Northern District of Texas.*

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[Department of Justice, United States circuit and district courts for the northern district of Texas, J. H. Finks, clerk.]

WACO, TEX., December 6, 1897.

Hon. WILLIAM MCKINLEY,  
*President of the United States.*

SIR: As there is at this time a vacancy on the Supreme Bench of the United States, I desire most earnestly to recommend to Your Excellency's favorable consideration to fill this vacancy the name of the Hon. Charles Swayne, United States district judge for the northern district of Florida.

Judge Swayne has for a number of years presided over the United States courts in Florida with eminent success and commendation. He has proven himself to be industrious, faithful, fearless, and an eminent jurist. His private life is absolutely above reproach.

Judge Swayne has not only served in the United States courts in his own district, but he has also presided with like success and commendation by designation in the circuit and district courts of this, the northern district of Texas, and also in Louisiana. In this public service he has necessarily acquired a wide and varied judicial experience, which has amply qualified him to fill with honor and credit the exalted position of justice of the Supreme Court of the United States.

Very respectfully,

J. H. FINKS.

FRESNO, CAL., *December 11, 1897.*

HON. WILLIAM MCKINLEY,  
*President of the United States:*

Understanding that there at present exists a vacancy among the justices of the Supreme Court of the United States, I desire to recommend to Your Excellency's consideration Judge Charles Swayne, of Florida, for the appointment to fill the vacancy suggested.

Judge Swayne for a number of years past has presided over the United States courts in the northern district of Florida—in the fifth circuit—with eminent success. He has proven himself to be an industrious, faithful, fearless, and impartial jurist, and his private life is absolutely without reproach.

Judge Swayne has served not only in the United States courts in his own district, but has also presided with like success, by assignments, in the circuit and district courts in other States than his own, notably in the States of Louisiana and Texas.

In all this additional public service he has necessarily acquired a wide and varied judicial experience that has amply qualified him for a future successful career in the exalted position of a justice of the Supreme Court of the United States, to which he now aspires.

Very respectfully, yours,

L. L. CORY, *Attorney at Law.*

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[Bomar & Bomar, attorneys and counselors.]

FORT WORTH, TEX., *December 4, 1897.*

HON. WILLIAM MCKINLEY,  
*President of the United States, Washington, D. C.*

DEAR SIR: Understanding that there is now a vacancy among the justices of the Supreme Court of the United States caused by the retirement of Justice Field, I desire most earnestly to recommend to Your Excellency's consideration for the appointment to fill the vacancy suggested Judge Charles Swayne, of Florida.

Judge Swayne for a number of years has presided over United States courts in the northern district of Florida, in the fifth district, with excellent success and commendation. He has proven himself to be an industrious, faithful, fearless, and most impartial jurist, and in his private life he is absolutely above reproach.

Judge Swayne has not only served in the United States courts in his own special district but he has also presided with like success and commendation by assignment in the circuit and district courts of other States than his own, notably in the States of Louisiana and Texas. In all of his public service he has necessarily acquired a wide and varied judicial experience that has amply qualified him for a future successful career in the exalted position of a justice in the Supreme Court of the United States.

Very truly, yours,

D. T. BOMAR.

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[Law offices Kearby & Muse, 239 Main Street, opposite St. George Hotel.]

DALLAS, TEX., *December 7, 1897.*

HON. WILLIAM MCKINLEY,  
*President of the United States:*

Understanding that there is likely to occur very shortly a vacancy among the justices of the Supreme Court of the United States, the undersigned desire most earnestly to recommend to Your Excellency's consideration for the appointment to fill the vacancy suggested Judge Charles Swayne, of Florida.

Judge Swayne for a number of years past has presided over the United States courts in the northern district of Florida in the fifth circuit with eminent success and commendation. He has proven himself to be an industrious, faithful, fearless, and most impartial jurist, and his private life is absolutely above reproach.

Judge Swayne has not only served in the United States courts in his own especial district, but he has also presided with like success and commendation by assignments in the circuit and district courts of other States than his own, notably in the States of Louisiana and Texas.

In all this additional public service he has necessarily acquired a wide and varied judicial experience that has amply qualified him for a future successful career in the exalted position of a justice of the Supreme Court of the United States.

Very respectfully, yours,

KEARBY & MUSE.



[Law offices of J. D. Johnson, Temple Building, corner Broadway and Walnut Street.]

ST. LOUIS, MO., November 20, 1897.

Hon. WILLIAM MCKINLEY,  
*President of the United States:*

Understanding that there is likely to occur very shortly a vacancy among the justices of the Supreme Court of the United States, the undersigned desires most earnestly to recommend to Your Excellency's consideration for the appointment to fill the vacancy suggested Judge Charles Swayne, of Florida.

Judge Swayne for a number of years past has presided over the United States courts in the northern district of Florida in the fifth circuit with eminent success and commendation. He has proven himself to be an industrious, faithful, fearless, and most impartial jurist, and in his private life he is absolutely above reproach.

Judge Swayne has not only served in the United States courts in his own especial district, but he has also presided with like success and commendation by assignments in the circuit and district courts of other States than his own, notably in the States of Louisiana and Texas.

In all this additional public service he has necessarily acquired a wide and varied judicial experience that has amply qualified him for a future successful career in the exalted position of a justice of the Supreme Court of the United States.

Very respectfully, yours,

J. D. JOHNSON.

[Charles H. Pennypacker, attorney at law.]

WEST CHESTER, PA., November 20, 1897.

DEAR SIR: Judge Charles Swayne, of Florida, is a fit man to be appointed to the Supreme Bench. He is capable, is honest, has the respect and esteem of the bar, and as a lawyer writing to a lawyer, I can assure you that his appointment would gratify the profession and strengthen the bench. I am a member of this court of last resort and I think I know something of its needs, and I am sure that Judge Swayne's long experience would serve him well in this place.

Very respectfully,

CHAS. H. PENNYPACKER.

WILLIAM MCKINLEY,  
*President of the United States.*

[Law offices of William M. Hayes.]

WEST CHESTER, PA., November 20, 1897.

Hon. WILLIAM MCKINLEY,  
*President of the United States:*

To fill the vacancy caused by the resignation of Mr. Justice Field, I take pleasure in recommending to your favorable consideration Judge Charles Swayne, of Florida.

Having known him personally for many years, I most cheerfully testify to his high character and great personal worth.

I can readily believe, by what I have learned from those who have had the best opportunity for knowing, that he is well equipped for the exalted duties devolving upon a justice of the Supreme Court of the United States.

Very respectfully,

WM. M. HAYES.

[Law office of Anthony Higgins, 834 Market Street, Wilmington, Del.]

NOVEMBER 29, 1897.

SIR: I respectfully beg to recommend the appointment of Hon. Charles Swayne, at present United States district judge for Florida, to the position of justice of the Supreme Court of the United States, about to be made vacant by the retirement of Mr. Justice Field. Judge Swayne is a native of Delaware, of this county of Newcastle. His father was one of the 300 who voted for Fremont; a man of sterling worth and integrity, and several times sent by his neighbors to our legislature. The son took his education in Philadelphia and came to the bar there. I recommended his appointment as district judge in Florida to President Harrison and secured his confirmation at that time by the Senate. I have noted with much interest his fearless discharge of judicial duty in his present position and the high rank he has taken as a jurist, and I feel that you will make no mistake in appointing him to this important position.

Very truly, yours,

ANTHONY HIGGINS.

The PRESIDENT.

OFFICE OF THE MAYOR,  
Philadelphia, November 29, 1897.

The PRESIDENT, *Washington, D. C.:*

Allow me to indorse for appointment to the Supreme Court of the United States, Hon. Charles Swayne. He is now United States district court judge for the northern district of Florida. I have known him for years, personally; before his appointment to his present position he practiced law in this city. He has a sound legal mind and in every way is well equipped for the bench of the Supreme Court.

Very respectfully,

CHAS. F. WARWICK.

[Law offices of Jones, Carson & Beeber, 426-432 Drexel Building.]

PHILADELPHIA, November 26, 1897.

His Excellency WM. McKINLEY,  
*President of the United States.*

SIR: I have learned with much pleasure of the suggestion of the name of Hon. Charles Swayne, the present district judge of the United States of the northern district of Florida, for the position soon to become vacant in the Supreme Court of the United States.

I have known Judge Swayne well for many years. I knew him at the Philadelphia bar as a reputable and able practitioner, and I have watched with interest and pleasure his deportment as a judge. He is of the judicial temperament and amply qualified.

Very respectfully and truly, yours,

HAMPTON L. CARSON.

[Office of the city attorney.]

SAN JOSE, CAL., December 10, 1897.

His Excellency WILLIAM McKINLEY,  
*President of the United States.*

DEAR SIR: I take great pleasure in recommending Judge Charles Swayne, of the northern judicial district of Florida, to fill the position on the Supreme Bench lately made vacant by the resignation of Justice Field. Judge Swayne has for many years adorned the bench by the judicial learning displayed by his decisions, and has endeared himself to his professional brethren by uniform courtesy and a display of those qualities which characterize a dignified gentleman.

The selection of Justice Swayne for the position of Justice of the Supreme Court would be an evidence to the country at large that the reputation of our highest judicial tribunal was being maintained.

Very respectfully,

WM. B. HARDY.

SHERIFF'S OFFICE,  
Philadelphia, November 20, 1897.

The PRESIDENT, *Washington, D. C.:*

Understanding that there is likely to occur, very shortly, a vacancy among the Justices of the Supreme Court of the United States, the undersigned desires most earnestly to recommend to your favorable consideration, for the appointment to fill the vacancy suggested, Judge Charles Swayne, of Florida.

Judge Swayne, for a number of years past, has presided over the United States courts in the northern district of Florida, in the fifth circuit, with eminent success and commendation. He has proven himself to be an industrious, faithful, fearless, and most impartial jurist, and in his private life he is absolutely above reproach.

Judge Swayne has not only served in the United States courts in his own especial district, but he has also presided with like success and commendation by assignments in the circuit and district courts of other States than his own, notably in the States of Louisiana and Texas.

In all this additional public service he has necessarily acquired a wide and varied judicial experience that has amply qualified him for a future successful career in the exalted position of a Justice of the Supreme Court of the United States.

Very respectfully, yours,

W. GREW.

[Miller Lock Co.]

PHILADELPHIA, November 26, 1897.

His Excellency WILLIAM MCKINLEY, *President*:

It gives me pleasure to assure you as to Judge Charles Swayne, whose friends, I am told, are pressing his name for the honor of your nomination to fill the vacancy now looked for in the Supreme Court.

I have known him intimately since boyhood. His character and patriotism are beyond reproach. His father was twice a member of the Delaware State legislature and was an eminently patriotic and highly honored citizen.

Judge Swayne's preceptor was the late distinguished Eli K. Price, of the Philadelphia bar. He also studied and graduated in the law department of the Pennsylvania University.

He is a true and tried Republican of the conservative class. If you name him for the place in view I am confident the appointment will redound to your honor and to the welfare and happiness of our country.

Yours, very truly,

MILTON JACKSON.

[Jackson &amp; Sharp Co., Delaware Car Works.]

WILMINGTON, DEL., December 4, 1897.

The PRESIDENT:

I am pleased to commend the Hon. Charles Swayne, of Florida, judge of the United States court, to your consideration for the vacancy soon to occur by the retirement of Justice Field from the United States Supreme Court.

Very respectfully,

JOB H. JACKSON.

[Idaho Daily Statesman, editorial rooms, Boise, Idaho.]

BOISE, IDAHO, November 27, 1897.

HON. WILLIAM MCKINLEY,  
*President of the United States.*

DEAR SIR: I desire to recommend Judge Charles Swayne, of Florida, for appointment to the Supreme Bench to fill the vacancy occasioned by the retirement of Justice Field. Judge Swayne for a number of years has been the presiding judge for the northern district of Florida with distinguished success. He has proved himself able and impartial, faithful to the high interests committed to him, and fearless in the discharge of duty. In his private life he is a model of exalted American citizenship; and both as a jurist and as a gentleman he would be an ornament of the bench of the most august tribunal in the world—the Supreme Court of the United States.

Very respectfully,

WM. BALDERSTON.

[Office of E. G. Shortlidge, M. D., 1812 Market Street.]

WILMINGTON, DEL., November 29, 1897.

The PRESIDENT OF THE UNITED STATES.

DEAR SIR: Understanding that there is likely to occur very shortly a vacancy among the justices of the Supreme Court of the United States, the undersigned desire most earnestly to recommend for your favorable consideration the appointment of Judge Charles Swayne, of Florida, to fill the vacancy.

Judge Swayne for a number of years past has presided over the United States courts in the northern district of Florida, in the fifth circuit, with eminent success and commendation. He has proven himself to be an industrious, faithful, fearless, and most impartial jurist. In his private life he is absolutely above reproach. Judge Swayne has not only served in the United States court in his own especial district, but has also presided with like success and commendation by assignment in the circuit and district courts of other States than his own—notably in the States of Louisiana and Texas. In all this additional public service he has necessarily acquired a wide and varied judicial experience that has amply qualified him for a future successful career in the exalted position of a justice of the Supreme Court of the United States.

Very respectfully, yours,

EVAN G. SHORTLIDGE.

[F. K. Ledyard, dentist, No. 53 South First Street.]

SAN JOSE, CAL., *December 10, 1897.*

HON. WILLIAM MCKINLEY,  
*President of the United States:*

We feel justified in our determined move in bringing before Your Excellency the name of Judge Charles Swayne, of Florida, as a candidate for one of the justices of the Supreme Court of the United States.

His father repeatedly represented his little State—Delaware—in the assembly, and was one of those old-time Quakers which we so much admire. Judge Swayne has a goodly share of those sterling qualities, and his past experience well fits him for the exalted position of Chief Justice of the Supreme Court.

Very respectfully,

F. K. LEDYARD.

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EXHIBIT FF.

LETTERS RECOMMENDING HON. CHARLES SWAYNE, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA, FOR APPOINTMENT AS JUDGE OF THE CIRCUIT COURT OF THE UNITED STATES, FIFTH CIRCUIT.

Benjamin S. Liddon, ex-chief justice State of Florida; Hon. John Eagan, United States attorney, Pensacola, Fla.; Hon. J. Emmet Wolfe, late United States attorney, northern district of Florida; Benjamin C. Tunison, Esq., Pensacola, Fla.; F. W. Marsh, Esq., Pensacola, Fla.; Buckner Chipley, Esq., Pensacola, Fla.; R. P. Reese, Esq., Pensacola, Fla.; A. A. Fisher, Esq., Pensacola, Fla.; J. W. Landrum, Esq., Pensacola, Fla.; E. K. Nichols, Esq., Pensacola, Fla.; Wm. Fisher, Esq., Pensacola, Fla.; Judge E. D. Beggs, Pensacola, Fla.; C. M. Coston, Esq., Pensacola, Fla.; Geo. P. Wentworth, Esq., Pensacola, Fla.; John D. Cody, Esq., Pensacola, Fla.; Hon. Daniel Campbell, De Funiak Springs, Fla.; S. K. Gillis, De Funiak Springs, Fla.; Judge D. G. McLeod, De Funiak Springs, Fla.; Messrs. Calhoun & Farley, Marianna, Fla.; E. P. Aaxtell, Esq., Jacksonville, Fla.; Wm. H. Harwick, Esq., Jacksonville, Fla.; Hon. H. L. Anderson, Ocala, Fla.; Hon. H. C. Coke, Dallas, Tex.; Mark D. Brainard, jr., Esq., Montgomery, Ala.

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[Liddon & Eagan, attorneys and counselors at law.]

PENSACOLA, FLA., *February 1, 1899.*

The PRESIDENT:

We most earnestly urge the appointment of Hon. Charles Swayne, our present United States district judge for the northern district of Florida, to the position of circuit judge of the fifth circuit, under recent act of Congress creating an additional circuit judge.

Judge Swayne has served in his present position for the past 10 years and made a most excellent judge, so that he is well qualified by experience for the circuit judgeship. We feel sure his appointment to the position would meet with the hearty approval of the bar and people of our circuit.

Very respectfully,

LIDDON & EAGAN,  
*Attorneys at Law.*

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[Department of justice, northern district of Florida, J. Emmet Wolfe, late United States attorney.]

PENSACOLA, FLA., *January 31, 1899.*

The PRESIDENT, *Washington, D. C.*

SIR: The friends of Hon. Charles Swayne, judge of the United States district court for the northern district of Florida, will present his name for your consideration in connection with the recently created office of additional circuit judge for the fifth judicial circuit.

Judge Swayne has presided over our district and circuit courts for several years with great satisfaction, both to the members of the bar and the public, evidencing in his decisions a finely discriminating mind and great judicial knowledge.

He has also repeatedly been called upon to sit as a member of the circuit court of appeals for this circuit, and the decisions he has delivered as a member of that court fully sustain the high reputation he has established in this district.

I cordially indorse Judge Swayne for this position and earnestly urge his appointment, and in so doing feel that I voice the sentiment of all who have knowledge of his character and ability.

Respectfully,

J. EMMET WOLFE.

[Benjamin C. Tunison, attorney and counselor at law, Pensacola, Fla.]

FEBRUARY 2, 1899.

The PRESIDENT, *Washington, D. C.*

SIR: I desire to join with many of the citizens of the fifth judicial circuit in recommending to Your Excellency for appointment as circuit judge Hon. Charles Swayne, of Florida.

From a long acquaintance with Judge Swayne and close observation of him I unhesitatingly say that he is most excellently well equipped to perform the duties of this exalted office. Judge Swayne is a man of sterling integrity and purest possible life; he is a patriotic American and an enthusiastic admirer of our grand Union; a believer in our Constitution as expounded by the great lights of our party, with a strength of character that enables him to do his duty as he sees it, regardless of consequences. As a lawyer he is well read, careful, logical, quick, and perceptive. As a judge he is calm, deliberate, dignified, impartial, and kind. His is peculiarly the judicial temperament.

Since June 1, 1889, Judge Swayne has been the presiding judge of our United States district court. Throughout that time I have been an active practitioner before him. Shortly after his appointment several hundred election cases were brought into this court, and Judge Swayne was compelled to pass thereon. These cases were bitterly fought. The leading lawyers of the State, as well as the newspapers thereof, were engaged in arraigning the public opinion against the court. Excitement ran high, and a condition existed almost analogous to rebellion against the authority of the United States. Two deputy marshals were killed by the lawbreakers, and in numerous counties of the State process from the United States court could not be served on account of the armed resistance. Judge Swayne had just been elevated to the bench but, notwithstanding the conditions existing throughout his district and the assaults made upon him, he never for one moment deviated from that just course that in a judge wins the admiration of all.

During the first few years of his judicial life he was "tried in the fire"; he went through the ordeal, and from out this season of trouble he won the highest position in the hearts and minds of the people of our State, irrespective of party affiliations. He has always been a just and upright judge.

During his incumbency in this district he has, by assignment, frequently held court in Texas and Louisiana, and to my personal knowledge he has there met with the highest commendation from those who were honored by making his acquaintance. He has also sat on several occasions upon the bench of the court of appeals of this circuit, and his opinions there rendered demonstrated his peculiar fitness therefor.

In every position in life Judge Swayne has acted with honor and credit, and the Government of the United States would be benefited should he be elevated to a position embracing a larger territory than that now occupied by him. As one looking to the maintenance of an exalted judiciary, I commend for the appointment above referred to Judge Charles Swayne.

Very respectfully,

B. C. TUNISON.

[Marsh &amp; Chipley, attorneys and counselors at law, Pensacola, Fla.]

FEBRUARY 2, 1899.

The PRESIDENT, *Washington, D. C.*

SIR: We respectfully indorse the application of the Hon. Charles Swayne for the position of circuit judge for the fifth judicial circuit, which position we understand it will soon become incumbent upon Your Excellency, with the consent of the Senate, to fill.

We can conceive of no more appropriate appointment than this would be, reflecting credit upon the United States judiciary, and being a just promotion of one who has so efficiently and ably served the interests of the people throughout this portion of the United States. As district judge he has received the respect of every person who has had the pleasure of his acquaintance, and his personal attributes are well fitted for the position.

Very respectfully,

F. W. MARSH.  
BUCKNER CHIPLEY.

[R. Pope Reese, attorney at law.]

PENSACOLA, FLA., *January 31, 1889.*The PRESIDENT, *Washington, D. C.*

SIR: I would respectfully recommend for your favorable consideration the name of Charles Swayne for appointment as additional judge of the fifth judicial circuit of



the United States. I think his experience well qualifies him to fill said office with credit to himself and the Government.

Respectfully,

R. P. REESE.

[A. A. Fisher, attorney and counselor, Pensacola, Fla.]

FEBRUARY 2, 1899.

Hon. WM. McKINLEY,  
*President, etc., Washington, D. C.*

SIR: Allow me to recommend to your favorable consideration for appointment as United States circuit judge for the fifth circuit Hon. Charles Swayne, the present judge of our United States district court.

Judge Swayne is in every way admirably qualified and equipped for this exalted position, and his appointment thereto would be eminently satisfactory to the bar and laity of this circuit. Judge Swayne's character, learning, and judicial disposition are unquestioned and unquestionable.

Very respectfully,

A. A. FISHER.

[James R. Landrum, attorney and counselor at law and marine notary public.]

PENSACOLA, FLA., *February 1, 1899.*

His Excellency WM. McKINLEY,  
*Executive Mansion, Washington, D. C.*

SIR: I have the honor of respectfully indorsing Judge Charles Swayne for judge of the United States circuit court, fifth judicial circuit.

Judge Swayne has given eminent satisfaction as judge of this district. Of deep learning and keen perception, his decisions are looked upon with real, as contradistinguished from ostensible, respect, and I believe that his preferment would meet with the hearty approval of the professional and business interests of the fifth judicial circuit.

Very respectfully,

JAMES R. LANDRUM.

[E. K. Nichols, attorney and counselor at law, 14 East Government Street, Pensacola, Fla.]

FEBRUARY 2, 1899.

His Excellency the PRESIDENT OF THE UNITED STATES,  
*Washington, D. C.*

SIR: Permit me, respectfully and most earnestly, to urge upon your favorable consideration the name of the Hon. Charles Swayne, now judge of one of the district courts in this State, for appointment as the additional circuit judge provided for in the fifth circuit.

I have known Judge Swayne intimately for many years—while at the bar and since his elevation to the bench. He was always eminent while in the practice of his profession for honesty, erudition, and industry. He is a man whose private life has been clean and irreproachable.

All the while since he has been a judge he has been distinguished for his learning in the law; for his untiring industry; for his suavity of manners, alike to lawyer and to litigant; for his absolute impartiality, and for his fearlessness in the administration of justice.

I verily believe that Judge Swayne's promotion to this higher court would prove a creditable act on the part of your excellency, for whom personally, and for the success of whose administration, I entertain the most profound regard and offer the most fervent prayer.

Your obedient servant,

EGBERT K. NICHOLS.

[Wm. Fisher and E. D. Beggs, attorneys and counselors at law, Pensacola, Fla.]

FEBRUARY 2, 1899.

His Excellency WILLIAM McKINLEY,  
*President of the United States, Washington, D. C.*

SIR: Having learned that the Hon. Charles Swayne, judge of the United States district court for the northern district of Florida, would be suggested to you for appointment as circuit judge of the fifth circuit of the United States under the recent act of Congress, we desire to respectfully recommend Judge Swayne to your favorable con-

sideration for that position, and to add our indorsement of him to the many others which will be presented to you in his behalf.

We have the honor to remain, with great respect,  
Yours, very truly,

WM. FISHER.  
E. D. BEGGS.

[Charles M. Coston, attorney and counselor at law, No. 14½ East Government Street, Pensacola, Fla.]

FEBRUARY 2, 1899.

HON. WILLIAM MCKINLEY,  
*President of the United States, Washington, D. C.*

DEAR SIR: It affords me pleasure, as member of the bar, practicing before the United States district court for the northern district of Florida, to indorse the Hon. Charles Swayne for the position of judge of the United States circuit court, fifth circuit.

His established reputaiton as a jurist, his consistent courtesy to the members of the bar practicing before his court, and his long and meritorious services as a member of the judiciary entitle him to the promotion he now desires.

I have the honor to be, yours, very respectfully, CHAS. M. COSTON.

[Geo. P. Wentworth, attorney at law.]

PENSACOLA, FLA., *February 2, 1899.*

The PRESIDENT, *Washington, D. C.*

SIR: It is with great pleasure that I have the privilege of recommending Hon. Charles Swayne, judge of the district court of the United States for the northern district of Florida, to the position of circuit judge for the fifth judicial circuit.

Respectfully,

GEO. P. WENTWORTH.

[John D. Cody, attorney and counselor at law, Pensacola, Fla.]

FEBRUARY 2, 1899.

The PRESIDENT, *Washington, D. C.*

SIR: I am advised that Judge Swayne's name will be proposed to you as a suitable one for appointment as United States circuit judge. His appointment would be a just recognition of a learned, upright, fearless, and patriotic judicial officer; would be eminently satisfactory to our people, and would reflect great credit upon your honored administration.

I commend his appointment.

Very respectfully,

JNO. D. CODY.

DE FUNIAK SPRINGS, FLA., *January 30, 1899.*

HON. WILLIAM MCKINLEY,  
*President United States.*

MY DEAR SIR: I take pleasure in recommending Hon. Charles Swayne for appointment to the judgeship of the fifth circuit.

I have known Judge Swayne, and have practiced in his court, and can recommend him as a man of spotless character, and in my opinion of sufficient judicial experience and legal knowledge as to fit him for the important office of circuit judge. I am not of his political household, hence can have no sinister motives in making this recommendation.

Very respectfully submitted.

DANIEL CAMPBELL, *Attorney at Law.*

DE FUNIAK SPRINGS, FLA., *January, 1899.*

The PRESIDENT:

It gives me great pleasure to indorse the application of Hon. Charles Swayne for appointment to the position of judge of the circuit court of the United States, fifth circuit. I know Judge Swayne to be a "whole-soul" Christian and an able judge.

Respectfully,

S. K. GILLIS, *Attorney.*

DE FUNIAK SPRINGS,  
Walton County, Fla., January 30, 1899.

The PRESIDENT:

I take pleasure in indorsing the application of Hon. Charles Swayne for appointment to the position of circuit judge, United States circuit court.

Judge Swayne's splendid record as judge of United States district court in Florida has clearly demonstrated his fine fitness and high attainments for the responsible position to which he aspires.

Respectfully,

D. G. McLEOD, County Judge.

[Calhoun & Farley, lawyers.]

MARIANNA, FLA., January 31, 1899.

His Excellency WILLIAM McKINLEY,  
President of the United States, Washington, D. C.

DEAR SIR: It has come to our attention that His Honor Judge Charles Swayne is a candidate for the office of circuit judge of the fifth United States circuit. In regard to his appointment we beg leave to say that we regard Judge Swayne as one of our ablest and most efficient judicial officers in the South, and we feel that his appointment would meet the unanimous approval of the whole bar.

Trusting that you may see fit to bestow upon him the further honors which his high attainments so justly merit, we are, indeed,

Very respectfully,

CALHOUN & FARLEY.

[Jacksonville, Tampa & Key West Railway, E. P. Axtell, general attorney.]

JACKSONVILLE, FLA., January 31, 1899.

The PRESIDENT, Washington, D. C.

SIR: I am advised that the Hon. Charles Swayne, United States district judge for the northern district of Florida, is being urged for the position of United States circuit judge for the fifth circuit.

I beg to say that during President Harrison's Administration I occupied the position of assistant United States attorney for said district, and had full opportunity of judging the qualifications of Judge Swayne. In my opinion he is thoroughly qualified in every particular to discharge the duties of a circuit judge. During the last two years he has frequently occupied a position upon the bench of the United States circuit court of appeals for this circuit, and is therefore eminently qualified for the position.

I heartily indorse Judge Swayne for this position, as I believe his appointment will be a creditable one.

Respectfully,

E. P. AXTELL.

[Office of William H. Harwick, attorney at law.]

JACKSONVILLE, FLA., January 31, 1899.

Hon. WILLIAM McKINLEY,  
President of the United States, Washington, D. C.

DEAR SIR: Having just learned that Hon. Charles Swayne, judge of the district court of the United States for the northern district of Florida, has been suggested for the circuit judgeship of this (fifth) circuit created by recent act of Congress, I take this first opportunity to indorse Judge Swayne for the position, feeling confident that his appointment as circuit judge for the fifth circuit of the United States would give a universal satisfaction to the members of the bar thereof.

The past record of Judge Swayne must satisfy every impartial person that in learning, judicial experience, and character he is eminently fitted to fill the position suggested.

Not only as a member of the bar, but as a Republican, deeply interested in all that pertains to the welfare of our party, I feel that Judge Swayne's appointment would be to the best interests of and meet the approval of the organization in this section of the country.

Very respectfully, yours,

WM. H. HARWICK.

[H. L. Anderson, attorney at law, Ocala, Fla.]

JANUARY 30, 1899.

The PRESIDENT, Washington, D. C.

SIR: I take pleasure in recommending to you for appointment to be judge of the fifth circuit of the United States the Hon. Charles Swayne, now district judge for the

northern district of Florida. The high character, learning, and judicial experience of Judge Swayne peculiarly fit him to discharge the duties of this high office, and I feel quite well assured that the bar of this State will be glad of an opportunity to support the claims of Judge Swayne to this appointment.

Respectfully,

H. L. ANDERSON.

[Law offices of Coke & Coke, Dallas, Tex.]

JANUARY 31, 1899.

BENJAMIN C. TUNISON, Esq., *Pensacola, Fla.*

DEAR SIR: I am in receipt of your favor of the 28th instant in reference to the candidacy of Judge Charles Swayne for the circuit judgeship of the fifth circuit.

I regret extremely that I did not hear from you earlier. Some four or five days ago a friend of mine called on me in behalf of Judge Aleck Boorman, of Louisiana, and, more in deference to his request than otherwise, I wrote a letter to the President in behalf of Judge Boorman. The letter, however, consisted of a plain statement that Judge Boorman, while presiding in the courts of the northern district of Texas, has received the esteem of the bar of this district, and was regarded by the bar as an upright and intelligent judge. This was in substance the letter.

If there is anything I can do to assist the cause of Judge Swayne without putting myself in a wrong position after writing this letter for Judge Boorman, I will take the greatest pleasure in doing so. I would rather see Judge Swayne in the position than any man I know. I entertain for him the highest respect. I saw much of him while holding the courts in this district, and not only conceived a friendship for him, but I believe that he is one of the most upright and honest men that has ever presided in the Federal courts in Texas. It would afford me the greatest possible pleasure to be of any assistance to him in obtaining this appointment. If there is any way in which I can do so without inconsistency, it would be a pleasure to do it. I have no idea that Judge Boorman has any sort of chance of the appointment, and if he should be eliminated from the contest I will take pleasure in writing to the President in Judge Swayne's behalf or doing anything else in my power, for I could write a very complimentary letter without going beyond what I believe to be the truth and his deserts.

Very truly, yours.

HENRY C. COKE.

JANUARY 31, 1899.

Hon. WILLIAM MCKINLEY,  
*President of the United States.*

SIR: I take pleasure in supporting Hon. Charles Swayne, judge of the district court of the United States for the northern district of Florida, as the proper appointee of yourself as the additional circuit judge of the fifth circuit.

Judge Swayne is a gentleman of unimpeachable character, learning, and is peculiarly adapted for the position.

Respectfully,

MARK D. BRAINARD, Jr.,  
*Land Attorney for the S. & N. A. R. R. and L. & N. R. R.*

EXHIBIT GG.

PENSACOLA, FLA., *February 4, 1899.*

The PRESIDENT, *Washington, D. C.*

SIR: I beg to join with numerous members of our profession in recommending to your favorable consideration for appointment as judge of the circuit court of the United States, fifth circuit, Judge Charles Swayne.

I am satisfied that this appointment would meet with the approval of the people of this circuit.

Very respectfully,

A. C. BLOUNT, Jr.,  
*Judge Criminal Court of Record, Escambia County, Fla.*

[O. T. Lyon & Sons, lumber.]

SHERMAN, TEX., *January 3, 1899.*

His Excellency WILLIAM MCKINLEY,  
*President of the United States.*

SIR: We take pleasure in commending to your notice for appointment as additional judge of the fifth circuit the Hon. Charles Swayne, at present Federal judge in Florida.

We have known Judge Swayne both in Florida and while sitting here (during the illness of late Federal Judge Rector), and feel sure in saying that the people of Texas would be pleased to see Judge Swayne receive this appointment; for his many friends here think that it would be but just recognition of his services and talents.

Very respectfully,

O. T. LYON.  
 CECIL A. LYON,  
*Member State Republican Executive Committee.*

PENSACOLA, FLA., *February 4, 1899.*

His Excellency the PRESIDENT OF THE UNITED STATES.

SIR: Having been a practitioner at the bar for a great number of years, both in this State (Florida) and in Alabama, and particularly in the United States district court for the northern district of Florida, I take great pleasure in recommending Judge Charles Swayne for the position of circuit judge, recently provided for in the fifth circuit.

Judge Swayne's judicial and executive abilities fit him preeminently for the new position suggested, therefore I would kindly ask Your Excellency to consider his application and the letters of those recommending him and make his appointment, for I voice the sentiments of the people of this section of the Union in this respect.

Yours, very respectfully,

Judge JAS. E. GREEN.

[John C. Avery, attorney and counselor at law, Pensacola, Fla.]

JANUARY 31, 1899.

President WILLIAM McKINLEY, *Washington, D. C.*

SIR: Congress having passed an act providing for an additional circuit judge in the fifth circuit, I wish to recommend for said position the Hon. Charles Swayne, now judge of the district court of the United States for the northern district of Florida.

Judge Swayne has filled the office which he now holds to the entire satisfaction of the bar of this district, regardless of politics. He enjoys the confidence and good will of all who have had business before him, and his promotion to a circuit judgeship would be generally regarded as a bestowal of honor upon one who justly deserves it and is thoroughly qualified for the duties of the place.

Respectfully,

JNO. C. AVERY.

PENSACOLA, FLA., *February 4, 1899.*

His Excellency WILLIAM McKINLEY,

*President of the United States, Washington, D. C.*

SIR: Having known Judge Swayne for the last eight years as a practicing attorney in the United States court, I take pleasure in recommending him for appointment to the judgeship of the fifth circuit of the United States. I think Judge Swayne is well qualified as a lawyer for the position, and I am satisfied that the bar and the people will be well pleased at his selection for the place.

Respectfully,

C. H. LANEY, *Attorney at Law.*

[Law offices Bruce S. Weeks, rooms 1 and 2, Bank Building.]

EUSTIS, FLA., *February 1, 1899.*

The PRESIDENT, *Washington, D. C.*

SIR: I have the honor of joining with others of the bar in suggesting the very especial fitness of Hon. Charles Swayne for the additional circuit judge of this (the fifth) circuit. Judge Swayne is known to every member of the southern Federal bar as a man above reproach and as a jurist of preeminent qualities. His deep learning, wide experience, and the respect he commands strongly commend his especial fitness for the position, and he would doubtless be an honor to the bench of the circuit court, as he has been to that of the district.

Very respectfully,

BRUCE S. WEEKS.



[Law office of Beggs &amp; Palmer, Orlando, Fla.]

FEBRUARY 1, 1899.

His Excellency the PRESIDENT OF THE UNITED STATES.

SIR: I take pleasure in indorsing Hon. Charles Swayne, judge of the northern district of Florida, as a gentleman of high personal standing and a lawyer of fine legal attainments, and am sure that he would fill the position of circuit judge in a manner acceptable to the members of the bar.

Yours, truly,

J. D. BEGGS.

[Law office of Anthony Higgins, 834 Market Street, Wilmington, Del.]

FEBRUARY 8, 1899.

The PRESIDENT.

SIR: I beg to recommend the appointment of Hon. Charles Swayne as United States district judge for the fifth judicial circuit.

I was largely concerned in favor of Judge Swayne when appointed to the United States district bench by President Harrison.

He is a native of this State and county. His father was one of our most estimable citizens, and a leading Republican in the Fremont days when they were numbered by only hundreds in the State.

Mr. Swayne is a man of upright character, good heart, quiet and sound judgment, and of thorough learning.

I do not think you would go wrong in appointing him to this responsible position.

Very respectfully,

ANTHONY HIGGINS.

NASHVILLE, TENN., February 9, 1899.

The PRESIDENT, *Executive Mansion*.

SIR: Through general sources of information (the public press) I learn there is to be an additional circuit judge appointed for the fifth circuit, and I desire to add my tribute (like the widow's mite) to the character and fitness of a man in the line of promotion, and seemingly the logical appointee. I first met the Hon. Charles Swayne, judge of the district court of the United States for the northern district of Florida, in my official capacity as special examiner of the United States Pension Office. I was impressed with his ability and firmness in exercising the functions of his position. Subsequently, I met Judge Swayne personally, and my admiration was increased with the knowledge of his purity of character and his universal courtesy and kindness. I believe I voice the sentiment of all who know him, friends or opponents alike, that he is eminently qualified in every particular to fill a position where integrity, honesty of purpose, and legal ability is absolutely required.

I have the honor to be, very respectfully, your obedient servant,

J. A. DAVIS.

[Law office Robbins &amp; Graham Co.]

TITUSVILLE, FLA., February 1, 1899.

His Excellency WILLIAM MCKINLEY,

*President, Washington, D. C.*

DEAR SIR: In the matter of the appointment of an additional circuit judge for the fifth circuit we would state that from our personal knowledge of the Hon. Charles Swayne, present district judge of the northern district of Florida, he would, in our opinion, be excellently fitted to discharge the duties of that important office.

Very truly, yours,

ROBBINS &amp; GRAHAM.

[Office of Judge First Judicial Circuit, State of Florida.]

PENSACOLA, FLA., February 11, 1899.

Hon. WILLIAM MCKINLEY,

*President, Washington, D. C.*

SIR: Hon. Charles Swayne, who is being urged for appointment to the office of circuit judge for the fifth judicial circuit of the United States, is a gentleman of much ability and industry, with 10 years' experience on the Federal bench, and I take great pleasure in indorsing him for appointment to said office.

Respectfully,

E. C. MAXWELL.

[Clark & Bolinger, attorneys at law.]

WACO, TEX., *February 4, 1899.*

His Excellency the PRESIDENT.

(Through the Attorney General.)

SIR: I beg to commend to Your Excellency the appointment of Hon. Charles S. Swayne, present judge of the district court of the United States for the northern district of Florida, for appointment as circuit judge of the fifth circuit created by the recent bill to that effect.

Judge Swayne presided in this district for two or three terms, by allotment during the incapacity of Hon. John B. Rector, late judge of this district. His suavity and learning, combined with his great administrative ability, commended him most favorably to the bar of the district, and his lifelong devotion to the Republican party would, in my judgment, not only justify his appointment to this vacancy, but such appointment would be as acceptable to the bar of the circuit as any that could be made under present conditions.

Respectfully,

GEO. CLARK.

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[Law office of Sayles & Sayles.]

ABILENE, TEX., *February 10, 1899.*

The PRESIDENT, *Washington, D. C.*

SIR: Permit us to suggest that Hon. Charles Swayne, judge of the United States district court for the northern district of Florida, would, in our judgment, be a proper appointee as the additional circuit judge of the fifth circuit.

Judge Swayne is a gentleman of culture and refinement, and has had a wide and varied experience as a lawyer, and is thoroughly conversant with the questions that arise in litigation in the South. We have tried cases before Judge Swayne, and this letter is based upon our personal acquaintance with him and our observations of him while on the bench.

Respectfully,

SAYLES & SAYLES.

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OFFICE OF UNITED STATES DISTRICT ATTORNEY,  
SOUTHERN DISTRICT OF FLORIDA,  
*Jacksonville, Fla., February 16, 1899.*

The PRESIDENT, *Washington, D. C.*

SIR: It affords me pleasure to add my testimony to that of many members of the bar as to the character, fitness, and ability of Hon. Charles Swayne, who is now being urged by many of the most prominent lawyers for judge of the fifth judicial circuit. As United States attorney I have practiced before him for years and have had better opportunity, perhaps, than anyone else for observing his conduct and measuring his ability.

I have no hesitancy in saying that he is fully equipped for the position, and you may feel assured that if he is appointed the duties of the office will be faithfully and promptly discharged.

Respectfully,

J. N. STRIPLING,  
*United States Attorney.*

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WASHINGTON, D. C., *February 7, 1899.*

The PRESIDENT:

I have the honor to join in the indorsement of Hon. Charles Swayne for appointment as judge of the United States circuit court for the circuit comprising the States of Florida, Georgia, Alabama, Louisiana, and Texas.

In my judgment, the appointment of Judge Swayne to this position would redound to the credit of the Federal judiciary and the administration. His experience and his mental and personal qualifications are all in line with the duties of the office.

Asking your careful consideration of the matter, I am, with great respect,

JOHN E. STILLMAN,  
*Late Chairman Florida Republican State Committee.*

[Law offices of Charles B. Parkhill.]

PENSACOLA, FLA., *February 8, 1899.*

HON. WILLIAM MCKINLEY,  
*President of the United States, Washington, D. C.*

SIR: I desire to add my recommendation and indorsement of Hon. Charles Swayne, United States district judge, for the northern district of Florida, for the appointment to the office of circuit judge for the fifth circuit as created recently by act of Congress.

Judge Swayne is fully qualified to discharge the duties of this office, and I think his appointment would meet with favor of the people of Pensacola.

Respectfully,

C. B. PARKHILL.

PENSACOLA, FLA., *February 4, 1899.*

HIS EXCELLENCY WILLIAM MCKINLEY,  
*President of the United States, Washington, D. C.*

SIR: I take great pleasure in recommending for appointment to the position of circuit judge for the fifth circuit of the United States Hon. Charles Swayne, the present judge of the district court for the northern district of Florida. I regard Judge Swayne as being thoroughly competent and qualified for said position, having practiced before him and knowing him as I do, think his appointment will be satisfactory to all who have come in contact with him.

Respectfully,

C. M. JONES,  
*Attorney at law.*

Over and over again, during the progress of this trial, Judge Pardee has been cited as an eminent authority who sat in judgment upon the findings of this judge. All of the appeals that went up from the decisions of Judge Swayne went to the tribunal over which Judge Pardee presided. All the assignments that were made to him, covering a long and laborious career as a judge, were made by Judge Pardee, and now, Mr. Speaker, I am going to adopt as a part of my address on this occasion a letter which I received from Judge Pardee, dated on the 24th day of March, and received one day later, which I shall ask the Clerk to read, so that the entire House may hear the testimony of the gentlemen who has been so often invoked by the gentleman from Pennsylvania [Mr. Palmer].

The Clerk read as follows:

[Personal and confidential.]

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.  
*New Orleans, La., March 24, 1904.*

HON. CHARLES GROSVENOR,  
*House of Representatives, Washington, D. C.*

DEAR SIR: I feel called to write you a personal letter in regard to the proceedings now pending in the House looking to the impeachment of Judge Charles Swayne, of the northern district of Florida. I was very much surprised to learn through the papers that the Judiciary Committee of the House had voted, six Democrats and two Republicans, to present articles of impeachment against Judge Swayne. As I have known Judge Swayne personally, and have known many of the court proceedings in his district since he was appointed judge, I want to present my view of his case to you. Judge Swayne, born in Delaware, settled in Florida about 1880, and entered upon the practice of the law. On the death of Judge Settle there was a protracted contest for the appointment of his successor, which resulted in throwing over all the more prominent candidates and the selection of Judge Swayne. This was in the early days of the Harrison administration and following an election in Florida in which it was generally reported and currently believed there had been the grossest sort of election frauds perpetrated against the Republicans.

The first time I met Judge Swayne after his appointment he told me that the President and the Attorney General were very much concerned to have the laws of the United States vindicated in the State of Florida, and that the parties who were charged with committing the election outrages should be prosecuted, and particularly that the Attorney General had impressed upon him the great importance of providing early

terms of court with a view that those cases could be taken up. Immediately following this, a great many prosecutions were instituted, indictments found, etc., to bring about the trial and conviction of parties charged with violating the election laws. The election frauds had been so numerous and so many people were involved therein that these prosecutions engendered an intense feeling against the judge and all the officers of the court; particularly was the judge singled out as the prime mover. The feeling was so intense that I know from information received at the time that Judge Swayne's friends regarded it as extremely hazardous for him to travel about his district. On one occasion on which I went to Pensacola to sit in the circuit court I found that Judge Swayne had not arrived on time, but through the agency of his friends had traveled up through Georgia in a roundabout course to come to Pensacola to avoid traveling on the direct road, where it was feared he would be insulted, if not worse treated. Anyhow, the matter resulted in Judge Swayne from that time on being persona non grata with the Democrats in Florida; and I think that those political troubles, accompanied by a certain lack of tact in dealing with hostile lawyers, is the true cause of Judge Swayne's present difficulties. Following this unpopularity, Judge Swayne's district was changed, largely for the purpose of punishing him. The change of the district resulted in his being, at it were, legislated out of his district. He had established a residence in St. Augustine and was there living with his family, consisting of a wife and four or five children. After his district was changed, in order to comply with the alleged spirit of section 551 of the Revised Statutes, it became necessary for him to dispose of his residence in St. Augustine and acquire and move to a residence in the western part of the State. In this respect, I am informed that he at once declared a residence and domicile in the western part of the State and followed that up with more or less activity by acquiring a house and other things, all taking four or five years. I understand that nonresidence in the district, as changed by law, is the main ground of his proposed impeachment. Section 551 reads as follows:

"A district judge shall be appointed for each district, except in the cases hereinafter provided. Every such judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor."

There is no doubt Judge Swayne resided in the district for which he was appointed, and under the circumstances I think it would be an extraordinary hardship on Judge Swayne to hold him to a very rapid compliance with the alleged spirit of section 551 by removing his residence, when Congress saw fit, as a matter of punishment, to change the limits of the district for which he was appointed. Exactly what proof he will be able to make upon this line I am not fully advised, but being satisfied as I am that the original motive of the prosecution is based on political grounds, and that his district limits were changed to his prejudice, I do not think that a Republican House should vote impeachment against him. About the time also that the district was changed a partisan legislature in the State of Florida passed resolutions calling for Judge Swayne's impeachment on the ground of absence from his district, incompetence, and partisanship. It is practically these resolutions, passed about 10 years ago, that now reenacted by the legislature of the State of Florida are, as I understand, considered as evidence against Judge Swayne by the House committee.

When Judge Swayne's district was changed it left him only the business at Pensacola and Tallahassee; it was very little and gave him a good deal of spare time, resulting in his being called to other parts of the circuit more frequently, perhaps, than any other judge. During every business season Judge Swayne has been called to hold court in other parts of the circuit, Alabama, Louisiana, Texas, and in the circuit court of appeals and the performance of this duty, in accordance with the laws of the United States, has resulted in his being a good deal absent from his district, and much of the absence complained of by the legislature of the State and by interested parties can be explained on this ground. The difficulties resulting from the trial and conviction of one O'Neal, who was charged with contempt of court for having assaulted and dangerously wounded a trustee in bankruptcy (see *O'Neal v. U. S.*, 190 U. S., 36), intensified feeling against Judge Swayne, and at the time great complaint was made that Judge Swayne was out of his district, while then he was holding court in Texas on my designation at the suggestion of the Attorney General, and was engaged in trying some very important national-bank cases in which the local judge was recused.

I have been thrown a good deal with Judge Swayne in the trial of cases, and I think the charge of incompetency is an outrage. He has a good legal mind and is instructed in law, and I am satisfied he is fully as competent as the average United States judge. One particular charge I noticed made against him is that in nearly all appeals from his decisions to the circuit court of appeals he has been reversed—only affirmed in about 25 per cent. I have had some examination made of the records of this court of appeals, and I find that out of 68 cases appealed from Judge Swayne's decisions 28 were reversed and the balance affirmed—in other words, about 41 per cent of reversals.

Considering that only involved and difficult cases are as a rule carried up on error or by appeal, this showing should be very satisfactory to Judge Swayne and his friends. But such a test is wholly fictitious, for only difficult and involved cases are appealed, and they constitute only a small percentage of the decisions actually rendered by a judge of a court of first instance.

I have written this long letter because I really feel that without the political prejudices against Judge Swayne there would be no impeachment, and that in justice to a southern judge who was a Republican before he was appointed, and who was appointed because he was a Republican, as there are no Republican Congressmen from the South, some of the northern brethren ought to look carefully into the case and be sure that an impeachment ought to be voted before putting a judge to the disgrace of an impeachment, consequent expenses, trial, and tribulation to himself and family resulting therefrom.

You are the only Congressman that I know well enough to write this letter to. I hope under the many pressing duties and engagements which you have you will find time to look into the real merits, if there are any, in Judge Swayne's case.

With continued best wishes,

Very truly, yours,

DON A. PARDEE.

Mr. COCKRAN of New York. Mr. Speaker, will the gentleman from Ohio permit a question in relation to that letter which has just been read?

The SPEAKER. Will the gentleman yield?

Mr. GROSVENOR. Yes.

Mr. COCKRAN of New York. Was that letter written with the knowledge by the author it would be read here; had the writer of that letter sanctioned its reading here?

Mr. GROSVENOR. The gentleman from New York ought to wait until the episode is closed before he comes with a criticism.

Mr. COCKRAN of New York. I do not criticize; I merely ask for the fact.

Mr. GROSVENOR. Mr. Speaker, it will be seen that the letter was addressed to me as a confidential communication in last March. Knowing Judge Pardee as well as I did; knowing him as a splendid soldier and a faithful, true man, as he was and has often been described here, I did not believe that he would hesitate to permit me under the extreme circumstances surrounding us here to make public use of that letter, but I did not feel authorized to do it, and I may say to the gentleman from New York that he will never have occasion to catechize me upon a question of good faith in the matter of correspondence—

Mr. COCKRAN of New York. I hope the gentleman will not think for a moment that I am in the slightest degree criticizing. I merely wanted the House to know whether the letter was intended to be publicly read or was private correspondence. I knew that whatever the gentleman gave would be given with a high spirit of chivalry—

Mr. GROSVENOR. I thank the gentleman very much. I thought the gentleman reflected a criticism which under the circumstances would have been a just one.

Mr. COCKRAN of New York. No; not on the gentleman.

Mr. GROSVENOR. I sent on last Friday a telegram, which I will read in full:

JANUARY 13, 1905.

Hon. DON A. PARDEE, *New Orleans, La.*:

Will you consent that I make public your letter to me about Swayne's case? Very desirous to do so. Answer.

C. H. GROSVENOR.



Very shortly, the same evening, I received this answer:

NEW ORLEANS, *January 13, 1905.*

Have no copy at hand. Remember only general purport. Use your discretion in my behalf and I will be satisfied.

DON A. PARDEE.

I hope that satisfies the gentleman from New York and everybody else who feels that I ought not to have made public that letter.

Mr. COOKRAN of New York. I beg the gentleman will not for a moment think that I in any way questioned his conduct. All I desired was to get the actual facts before the House.

Mr. GROSVENOR. In this connection I wish to deflect for a moment. If I got the trend of the gentleman from Alabama [Mr. Clayton] in his speech yesterday, he said that the Davis and Belden cases could not be reviewed by the court above, and therefore a tyranny and an outrage was manifested by the refusal of the judge to treat these distinguished shysters properly and was putting a final judgment upon them when they could have no review.

Now I will read to the gentleman a telegram that came to me voluntarily from one of the best judges in the United States, and I hope that he will make correction in the Record. I see his speech has not appeared, or I should have been able to quote him exactly. If I am right and he was wrong, I hope he will, in behalf of maintaining the high character of the bar, correct his mistake. The following is the telegram to which I refer:

Since your wire I feel bound to say judgment for contempt against Davis, Belden, and O'Neal were reviewable in the circuit court of appeals by proper writ. See cases decided at the last term of the Supreme Court.

DON A. PARDEE.

Nobody undertook to review them that way, and they come here and whine, and a great lawyer with an enormous amount of force as an orator tells this unsuspecting and innocent body of gentlemen there was no relief for these men, and that they could not have tested whether or not Judge Swayne made a proper disposition of those cases and had to submit to the tyranny.

Now, I desire in this connection to refer to some of the indications of the very curious character, that I think will strike any lawyer, in the progress of the taking of this testimony.

A MEMBER. Can you conveniently recite those cases referred to?

Mr. GROSVENOR. I can; yes, sir. Judge Swayne is attacked on this floor for not having dignity enough, for not being fluent enough, and because he did not explain sufficiently. He stood as silent as a sheep "is dumb before her shearers," and he opened not his mouth. I desire to read the sort of a chance he had to open his mouth in the presence of one of his shearers. Judge Swayne was charged with using abusive language, for stating that he would not believe a man under oath in connection with the Hoskins case, and it is said that Judge Swayne never made any explanation of that. Now, let us see what sort of a chance he had. On page 593 of the hearing is a question put to him by the distinguished prosecuting attorney, as follows:

Q. You did say that you would not believe your brother if he swore to the story of the books?—A. I have heard that story so often that I will not testify that I said it or I will not testify that I did not say it. I can testify as to what my impression was at that time.

Q. I do not want your impression, but I want your language.

Mr. BUTLER of Pennsylvania. Who said that?

Mr. GROSVENOR. The prosecuting attorney, Liddon. Then follows:

A. I will not undertake to swear to-day whether I said that or not.

Q. You did say emphatically that you would not permit parol testimony about the books?—A. At that time.

Q. Did you limit your statement that you would not hear it at that time, and give any indication that you might hear it thereafter?—A. I can not recall what intimation I gave.

So he undertook to tell what his impression was, and he was simply choked off by the action of a single member of a subcommittee, acting doubtless for himself and the others.

Let me show you how this record appears to an average citizen who is not a lawyer, if you please. Great stress has been laid upon a letter that was forced into this record and makes its appearance here, signed by one Boone, whoever he may be and whatever figure he may cut. When the letter was produced, a member of the committee [Mr. Palmer] put the document in the face of Tunison and said:

Q. Do you admit the signature of Boone?

A letter was sought to be put in evidence written by Boone to Tunison to establish a conspiracy between Tunison and Boone and Swayne. Now, then, there is the fundamental proposition, gentlemen, and some of you are lawyers—all of you are men of common sense. I only read this to get at a characterization, a fair illumination, of every step that has been taken in this prosecution. This question was put to Tunison, who is said to have been the writer of this letter:

Q. Do you admit the signature of Boone?—A. No; I do not admit the signature of Boone.

Mr. MARSH. Who says that?

Mr. LITTLEFIELD. Tunison, representing the respondent.

Mr. GROSVENOR. Then Mr. Palmer said:

We will accept the letter.

You might as well have brought the picture from one of the dead walls of Washington advertising Johnny Dewar's Scotch whisky. "We will accept the letter." They were foiled in the attempt to prove its authenticity.

Judge Clayton was not quite satisfied with that sort of acceptance. I will read:

Judge CLAYTON:

Q. Can you tell how you came in possession of that letter?

Now, this is the fellow who received the letter, or who is said to be one of the coconspirators by whom they are trying to prove the authenticity of this letter. This question was put to Judge Liddon.

A. I will state that I do not know that it was ever in the possession of Mr. Tunison.

Now, would not that have put an end ordinarily to a pursuing of that line of consideration? Here was a lawyer representing the prosecution. It purported to be a letter written by a coconspirator and delivered to a coconspirator. Failing to prove that it had ever been received by the coconspirator, or written by the coconspirator, they accept the letter first, and then Judge Liddon says he does not know that it was ever in the hands of Tunison.

Mr. CRUMPACKER. If the gentleman will allow me to interrupt him, is that letter copied into the original report of the committee?

Mr. LITTLEFIELD. Yes.

Mr. GROSVENOR. This letter is one of the buttresses, one of the abutments, one of the eternal principles to save the judiciary of the United States from scandal, in the language of the gentleman from Massachusetts [Mr. Powers].

Mr. GILLETT. I object to the receiving of it. Counsel says he does not claim that Tunison ever received it. I object to receiving of matters of that kind in evidence. It would not be received as evidence in any court in the world, and I want to go on record as objecting to it.

Now, here is the judicial opinion rendered by which that letter became a formidable weapon in the hands of the prosecution—a formidable piece of evidence. Here is the judicial opinion. If you can find in all the history of the case that Judge Swayne ever looked at that letter I will vote for impeachment.

A MEMBER. On what page is that?

Mr. GROSVENOR. On page 153.

Judge PALMER. As I understand it, this Boone attempted to oppress this man Hoskins, as a bankrupt in Judge Swayne's court, and Judge Swayne would not permit any proof of his solvency; said he would not believe his own brother; would not allow any trial of Hoskins as to his solvency. We admit this Boone letter.

I wanted to find out now, and Mr. Gillett wanted to see whether Judge Swayne ought to be assailed even if this halfway proposition was sustainable.

Mr. GILLETT asked:

Was it ever seen by Judge Swayne? I object to it.

Letter from Boone to Tunison & Loftin marked Exhibit ———.

[At this time the letter had not been given to the stenographer.]

God knows where that letter came from; I do not know anything about it. Now, from an absurd performance of that kind we can obtain very little knowledge of its whereabouts.

Now, that is the evidence with which this prosecution is buttressed. A conspiracy is alleged between Tunison, said to be a special favorite of Swayne, and Boone, who conspires with Tunison to do some act. I do not know what it was, and I do not care what it was.

[Here the hammer fell.]

The SPEAKER. The time of the gentleman has expired.

Mr. GILLETT of California. I yield 15 minutes more to the gentleman from Ohio.

The SPEAKER. The gentleman is recognized for 15 minutes more.

Mr. GROSVENOR. But when it is traced around, first, the writing of the letter is not proved; second, the delivery of the letter is absolutely negatived; and thirdly, it is shown in the record that Swayne never heard of the letter. That is the basis, I say, upon which a united vote of one side of this House will probably be given to impeach a United States judge for having conspired to prosecute somebody by the name of Hoskins.

Now, I have got very little to say about these other matters of impeachment. I have grown up, in a degree, with all this case. I was a member of this House when this district was cut in two. I know it was a matter of general notoriety that there was no possible

necessity for the additional judge; that it was done for the purpose of injuriously affecting Judge Swayne; and that it did injuriously affect him is instanced by the question now being raised here, whether he resided there or not. The statement made by Judge Pardee explains all that question. When that bill was passed, it undertook to drive him out of the district to which he had been appointed, and in which it is admitted he had been located. When the bill was passed, another judge entered into that end of the district and Judge Swayne had a good deal of trouble in getting a domicile. No doubt he had sacrificed the property that he had lived in. No doubt he was refused accommodation in Pensacola; and the Colorado case, brought into this matter by the distinguished gentleman from Maine, absolutely states the law in the case as clearly and distinctly as it is possible that it should be stated, in which the judge says that he had resided in the district for which he was appointed, and complied absolutely with the section of the statute under which this prosecution is brought.

Now, I have but one little word to say about a very small matter. When I spend a great deal of time trying to impeach a judge of the United States court because he has accepted \$2.50 or \$3 worth of victuals of an unknown character, of an unknown value, I will turn that prosecution absolutely over to the gentleman from Pennsylvania [Mr. Palmer] and the gentleman from Alabama [Mr. Clayton]. Look at the magnitude of it, gentlemen; look at the size of this transaction. Judge Swayne was up here some place in the State of New Jersey, and the receiver of that railroad in Florida, in the dead of summer, wanted him in Florida for some purpose, and sent after him, and probably fed him on the way down. Now, I want to point out to the gentlemen on the other side one of the strong points of their case. They say it was not a matter of very much importance. I understand some of the gentlemen on the other side are absolutely shocked at the idea that such a thing would be insisted upon as the impeachment of a judge for a matter of that character. But they say this judge approved the accounts of the receiver, and that he put into those accounts the bread and butter, and beer, pretzels, and sauerkraut. Point me, gentlemen of the prosecution, to the place in that record where there is any evidence that the receiver ever charged for it or that the judge ever approved an account that covered it, and I will vote for this impeachment. The whole thing is a mere piece of assertion that has not a shadow of foundation in the record. Why, they say presumably the receiver charged for that bread and butter and presumably Swayne approved it. Presumably, gentlemen, he did not charge a cent for it, and presumably he did not approve it, for he did not know anything about it. Now, there is not a shadow of evidence. Search that record and find it if you can. You will find that the naked fact remains that the judge was up here where he had a right to be and he was wanted down there by the receiver of that railroad, who sent for him, and all else is left to the imagination of the prosecuting attorneys.

So much for that. Now, as to the \$10 a day matter, I want to say that the gentleman from Iowa [Mr. Lacey] did not leave a button on the coat of anybody who talks about that ten-dollar transaction. I do not want to go into any reminiscences, and I do not want to talk about what the judges of the courts of the United States have done.

The gentleman from Pennsylvania [Mr. Palmer] stood up here the other day and said that there was not a shadow of evidence that any of the judges had decided that they had a right to this \$10 a day. And yet the gentleman made statement after statement on matters that came to his knowledge, and then said there was no proof in the record. Why was not that proof in the record? Why were not the reasons and grounds upon which Judge Swayne took that \$10 put into the record? Why not? I say that if a convict stood in the presence of a court, any civilized court on earth that understood the first principles of the law of this country, with a record such as was made upon that question in this record, he would get a new trial as quickly as the judgment of the court could grant it to him.

Gentlemen, what is the gravamen of this offense of Judge Swayne? What is it? It is the scien-ter. It is that he knowingly, corruptly, and unlawfully took money that was not coming to him. You can not make a technical violation of a law and punish a judge for it any more than you can punish a Member of Congress for it. Would not a Member of Congress feel rather cheap if somebody should want to impeach him for having drawn \$22.50 as his allowance of mileage when in fact he had not paid out a cent of it? Well might the gentleman who spoke the other day say, Let him that is without fault among you cast the first stone.

But let us see now. This judge is charged with the wicked, the criminal, the highly criminal charge of having purloined money out of the Treasury of the United States. He is called upon to account for why he did it, and he makes the attempt, and here is the answer he got:

Mr. LIDDEN. We offer that paper which has just been read, Exhibits B and C.

I do not know what they were.

By Mr. HIGGINS:

Q. The accounts of all the judges pass through your division of the United States Treasury Department?—A. Yes, sir.

Q. And as chief of that division you have supervision, and it is your duty to inspect all of them?—A. Yes, sir.

Q. I observe here that the charge as certified by Judge Swayne for any particular number of days seems to be at the rate of \$10 a day.—A. Yes, sir.

Q. Is that usual?

Mr. PALMER—

Now, they had reached the point of time when Judge Swayne could have said, first, I construe the law of my country as giving me that \$10 a day; second, every department of this Government from the day of the passage of this act has given a united, a unanimous, consecutive, and sustained construction of that statute. Furthermore, the House of Representatives, and ultimately the Senate of the United States, after having agreed upon this law, put their own construction upon it and I want to offer evidence of it. And then he might have gone forward and said 64½ per cent of the judges of the United States have put this construction upon this statute, and I have joined in that construction; and, gentlemen of the committee, before you charge me with a crime, let me tell to my triers that I have acted upon the construction given during all the period of time, yea, from the time it was enacted and before it was enacted, given in the controversy between the two sides of the House.



"But," says the gentleman from Pennsylvania [Mr. Palmer], "I don't think that of any consequence." A man charged with taking money undertakes to explain it; undertakes to prove, as the Supreme Court says, what was absolutely conclusive answer to the whole of it, and a single member of the subcommittee says: "I don't think that amounts to anything; get out." [Applause.]

Mr. PALMER. Will the gentleman allow me to interrogate him?

Mr. GROSVENOR. Yes.

Mr. PALMER. Is the gentleman aware that the entire Judiciary Committee, including the gentleman from Ohio, who handed him the book, said that the ruling was right?

Mr. NEVIN. Mr. Speaker, may I interrupt the gentleman from Pennsylvania for a moment? The gentleman from Pennsylvania is utterly mistaken as to that. I never said it was right, I never believed it was right, and I know it was wrong. [Applause.]

Mr. LITTLEFIELD. The gentleman from Ohio [Mr. Nevin] did not sign the minority views.

Mr. PALMER. I am mistaken about that; the gentleman from Maine did sign them.

Mr. LITTLEFIELD. He did, and he has not changed his views.

Mr. PALMER. So we have 16 out of the 17 members of the Judiciary Committee declaring that the ruling was right, and any man who made the pretense of being a lawyer, with two grains of gray matter in his brain, would know that it was right. [Laughter and applause.]

Mr. NEVIN. If it is a question of gray matter, we had better weigh our brains. I thought it was a question of logic.

Mr. GROSVENOR. The utterance of the gentleman from Pennsylvania is characteristic of his entire record and of his entire career in this persecution. [Laughter and applause.] I have no answer to make to such an attack as that. The gentleman from Pennsylvania will find out at the end of this persecution—he will ascertain distinctly by the record of the two bodies of the Congress where the gray matter is, and where the vicious spirit of persecution and bitterness is assumed by a person claiming to be a lawyer, and who palms himself off as a fair trier of fact. [Laughter and applause.]

Now, suppose Judge Swayne had made that ruling under the decision here of the Supreme Court that covers this whole question.

The SPEAKER. The time of the gentleman from Ohio has expired.

Mr. GILLET of California. Mr. Speaker, I yield ten minutes more to the gentleman from Ohio.

Mr. GROSVENOR. Now, what was Mr. Higgins trying to do? Let us see whether Higgins and the Supreme Court of the United States are the equal of the opinion rendered by the committee.

Mr. HIGGINS. The point that I make, if the committee pleases, is that the action of the several and respective judges in the courts of the United States are practically a judicial interpretation of the statute—as to what it means—and that if the judges are informed to furnish the certificates at the rate of \$10 a day, it is their interpretation of its being proper and right under the statute.

Mr. PALMER. It follows that because some other judge expended \$10 a day that Judge Swayne expended \$10 a day.

"Some other judge," see? "Some other judge." They were trying to prove that there had been a continuous and uniform and universal interpretation of this law, and it is cut in pieces by the gentleman from Pennsylvania, who says, "some other judge," a single judge.

Now, my distinguished friend from Ohio, who, for a young man, has some gray matter and some knowledge of the law, and will be heard from in this House in the future, brought to me and the House this decision in the United States court. I do not want to tell where he found it, or how he happened to be cited to it, but I may say this, that it was the foundation upon which the great body of the judges of the United States based their opinion, upon which Judge Swayne acted. When the gentleman from Ohio presented this book yesterday the gentleman from Alabama [Mr. Clayton] said that this statute was a hard statute to understand; that was the effect of what he said. He said that the one under consideration now was a very plain statute; that it did not need any construction.

Now, the statute under which this controversy grew up in the case of United States against Hill (120 U. S. Reports), reported from the circuit court of Massachusetts, involved a construction of the statute that was as simple and as plain as the English language, it seems to me, could have made it. It provided that the clerks of court should turn into the Public Treasury all of their fees above a certain sum of money. The clerk held that the \$3 each for naturalization papers was not a fee within the meaning of the statute.

It went on and on and was considered by the departments here and payments made under it just exactly as was done in the Swayne case, and the Supreme Court of the United States, without spending any more time upon the subject, said that the contemporaneous rulings of the departments and the contemporaneous appropriations by Congress and the contemporaneous rulings of the courts settled the construction of the statute, and the statute stands to-day unrepealed, unamended, and in full force; and it was that law, that decision, laid down by the highest court in the United States or in the world, under which Judge Swayne acted, and if he is to be impeached here these gentlemen, these purifiers of the bar and the bench and the country, ought to proceed at once to assail the United States judge for the district of Massachusetts and the United States Supreme Court [Applause.]

#### UNITED STATES *v.* HILL.

Error to the circuit court of the United States for the district of Massachusetts.

Argued December 29, 1886; decided January 31, 1887.

It was the custom in the United States courts in Massachusetts, from 1839 to December, 1884, known and approved by the judges, for the clerk to charge \$3 as fees in naturalization proceedings. The clerk of the district court never included those fees in his returns. That fact was known to the judges to whom his accounts were semi-annually exhibited and by whom they were passed without objection in that particular. Relying on that custom and believing those fees formed no part of the emoluments to be returned, the clerk of the district court appointed in 1879 did not include those fees in his accounts. This was known to the district judge when he examined and certified the account, and his accounts so made out to July, 1884, were examined and adjusted by the accounting officers of the Treasury. Under a rule made by the district court in 1855 the clerk had charged and received the \$3 as a gross sum for examining in advance of their presentation to the court the application papers and reporting to the court whether they were in conformity with law, and had made no division for specific services, according to any items in the fee bill in sections 823 et seq. of the Revised Statutes. In a suit brought in December, 1884, on the official bond of the clerk, against him and his surety, to recover the amount of the naturalization fees: Held—

(1) The provision in section 823, taken from section 1 of the act of February 26, 1853 (chap. 80, 10 Stat., 161), that the fees to clerks shall be "taxed and allowed," applies, *prima facie*, to taxable fees and costs in ordinary suits between party and party prosecuted in a court, and there is no specification of naturalization matters in the fees of clerks.

(2) The statute being of doubtful construction as to what fees were to be returned, the interpretation of it by judges, heads of departments, and accounting officers, contemporaneous and continuous, was one on which the obligors in the bond had a right to rely, and, it not being clearly erroneous, it will not now be overturned.

This was an action at law to recover from the defendants in error fees which it was claimed the clerk of the district court of the United States for the district of Massachusetts should have accounted for, the defendants being the clerk and his bondsman. Judgment for defendants, to review which this writ of error was sued out. The case is stated in the opinion of the court.

Mr. Assistant Attorney General Maury for plaintiff in error.

Mr. John Lowell for defendant in error.

Mr. Justice Blatchford delivered the opinion of the court.

On the 5th of February, 1879, Clement Hugh Hill was duly appointed clerk of the district court of the United States for the district of Massachusetts by the judge of that court. On the same day he and William Goodwin Russell and another person executed a joint and several bond to the United States in the penal sum of \$20,000, conditioned that Hill, "by himself and by his deputies," should "faithfully discharge the duties of his office, and seasonably record the decrees, judgments, and determinations of the said court, and properly account for all moneys coming into his hands, as required by law." The statute requiring a bond, in force at the time, as section 3 of the act of February 22, 1875, chapter 95, 18 Stat. L., 333, which required the clerk to give a bond, with sureties, "faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court of which he is clerk."

This suit was brought by the United States against Hill and Russell on said bond by a writ dated December 4, 1884, claiming \$22,000 damages. The declaration alleges, as a breach of the bond, that Hill "has not properly accounted for all moneys coming into his hands, as required by law, according to the condition of said bond." The answer of the defendant denies that allegation, and avers that Hill "has made full and sufficient returns of all moneys received by him, as required by law, and that he owes no sum of money to the said United States."

The following agreed statement of facts was filed July 1, 1885, signed by the attorneys for the respective parties, and upon it the case was, by written agreement, submitted to the decision of the court:

"The defendant Hill was appointed clerk of said court on the 5th day of February, 1879, and duly qualified as clerk, and the defendants gave the bond, a copy of which is annexed to the declaration. As clerk he has made half-yearly returns of fees and emoluments received by him, but he has not included in the same the amounts received by him for the naturalization of aliens in the district court.

"It has been the custom in the United States courts in the district of Massachusetts for a long time, not less than 45 years before the date of the writ in the present action, and known and approved by the judges, for the clerk to charge \$1 as a fee for a declaration of intention to become a citizen, and \$2 as a fee for a final naturalization and certificate thereof; and the clerk of the district court has never included these in the fees and emoluments returned by him, and this has been known to the judges to whom the accounts have been semiannually exhibited, and by whom they were passed without objection in this particular. Following this custom, and believing and being informed that these fees formed no part of the emoluments to be returned to the Government, the defendant Hill has not included these amounts in his accounts, and this was known to the judge when his accounts were examined, and he made on each a certificate in the form annexed; and his accounts so made out, up to July 1, 1884, have been examined and adjusted by the accounting officers of the Treasury Department.

"The clerks of the several courts of the State of Massachusetts made similar charges for like services and made no returns to the treasurers of the counties of the fees so received until the passage of the statute of the State of 1879, chapter 300.

"If, upon the facts before stated and agreed, the court shall be of the opinion that the said fees charged by the defendant Hill in respect to naturalizations, or any part thereof, should have been returned in his accounts to the United States as part of the emoluments of the clerk, from which his compensation is to be taken, in accordance with section 833 of the Revised Statutes, and that the settlements and adjustments of his several accounts, as above mentioned, constitute no defense to this action, the case shall be sent to an assessor to ascertain the amount due the United States in accordance with the law laid down by that court, unless the parties shall, within 15 days after the announcement of the opinion of the court, agree upon the amount.

"The blanks used for the report of clerks' fees and emoluments, and the blanks used in naturalization of aliens, may be considered as part of the record of the case.

"The instructions of the Department of Justice to the several clerks dated January, 1879, may be read for any purpose for which they are properly applicable; but neither

the defendant Hill nor his deputy, Mr. Bassett, has any recollection of receiving or seeing such a circular before October, 1884.

"The court may draw such inferences from the above facts as a jury might."

Section 833 of the Revised Statutes provides that every clerk of a district court shall, "on the 1st days of January and July in each year, or within 30 days thereafter, make to the Attorney General, in such form as he may prescribe, a written return for the half year ending on said days, respectively, of all the fees and emoluments of his office, of every name and character, and of all the necessary expenses of his office, including necessary clerk hire, together with the vouchers for the payment of the same for such last half year. He shall state separately in such return the fees and emoluments payable under the bankrupt act \* \* \* Said returns shall be verified by the oath of the officer making them."

Section 839 of the Revised Statutes provides that "no clerk of the district court \* \* \* shall be allowed by the Attorney General \* \* \* to retain of the fees and emoluments of his office \* \* \* for his personal compensation, over and above his necessary office expenses, including necessary clerk hire, to be audited and allowed by the proper accounting officers of the Treasury, a sum exceeding \$3,500 a year for any such district clerk, \* \* \* or exceeding that rate for any time less than a year."

Section 844 provides that every clerk shall, "at the time of making his half-yearly return to the Attorney General, pay into the Treasury or deposit to the credit of the Treasurer, as he may be directed by the Attorney General, any surplus of the fees and emoluments of his office which said return shows to exist over and above the compensation and allowances authorized by law to be retained by him."

Section 845 provides that in every case where the return of a clerk "shows that a surplus may exist the Attorney General shall cause such returns to be carefully examined and the accounts of disbursements to be regularly audited by the proper officer of his department and an account to be opened with such officer in proper books to be provided for that purpose."

The foregoing provisions of sections 833, 839, 844, and 845 were taken from section 3 of the act of February 26, 1853 (ch. 80, 10 Stat., 165, 166), the supervision being changed from the Secretary of the Interior to the Attorney General by section 15 of the act of June 22, 1870 (ch. 150), establishing the Department of Justice (16 Stat., 164).

Section 846 provides that the accounts of clerks "shall be examined and certified by the district judge of the district for which they are appointed before they are presented to the accounting officers of the Treasury Department for settlement. They shall then be subject to revision upon their merits by said accounting officers, as in the case of other public accounts." This provision was taken from section 1 of the act of August 16, 1856. (Ch. 124, 11 Stat., 49.)

On the foregoing facts and statutes it was contended by the United States before the circuit court, held by the circuit judge and the district judge, that the sums received as fees in naturalization proceedings were "fees and emoluments" within the meaning of section 833, and ought to have been included by the clerk in his returns, on the ground that they were received for services rendered by the clerk in his official capacity, and he was therefore bound to account for them, whether they were or were not chargeable under section 828, prescribing fees for clerks. The circuit court held that the action could not be maintained, and entered a judgment for the defendants, to review which the United States have brought a writ of error.

The opinion of the circuit court, which accompanies the record, and is reported in 25 Federal Reporter, 375, gives the following statement as to the former and the existing legislation of Congress on the subject and as to the action of the courts and of the executive departments of the Government: "By the act of March 3, 1791 (1 Stat. L., 217, sec. 1), the compensation of the clerks was fixed at \$5 a day for attending court and their travel. To this was added by the act of May 8, 1792 (1 Stat. L., 277, sec. 3), such fees as were allowed in the supreme courts of the State, with a provision that for discharging duties not performed by the clerks of the State courts and for which the laws of the State made no allowance, the court might allow a reasonable compensation. Under these acts the clerks were allowed to retain all their fees and were not required to render any account of them to the Government. The first law requiring returns to be made was the act of March 3, 1841 (5 Stat. L., 427). This act established the compensation of clerks of courts at \$4,500 a year, above clerk hire and office expenses, payable from fees only, and required them to pay the overplus into the Public Treasury, under such rules and regulations as might be prescribed by the Secretary of the Treasury.



"The next in order of time was the act of May 18, 1842. (5 Stat., 483.) That act required the clerks to make to the Secretary of the Treasury semiannual returns, embracing all the fees and emoluments of their office of every name and character, distinguishing those received or payable under the bankrupt acts from those received or payable for any other service. It authorized the clerk of the district courts to retain from the fees and emoluments of his office, above office expenses and clerk hire, as his personal compensation, \$3,500 a year, and required him to pay the surplus into the Treasury. It has been stated that the provision in this act as to bankruptcy fees was inserted to change the law, as ruled by Judge Story, that the clerks were not bound to account for fees earned under the bankrupt act of August 19, 1841. The act of March 3, 1849 (9 Stat., 395, sec. 4), establishing the Department of the Interior, transferred the supervision of the accounts of clerks to the Secretary of the Interior. Until the act of February 26, 1853 (10 Stat., 161), the official fees of the clerks remain in substance as fixed by the acts of 1791 and 1792. The act of 1853 was the first uniform statute regulating the fees of the clerks and other officers of the courts throughout the United States. It established the present fee bill, and is reproduced in section 823 to section 857 of the Revised Statutes. Its provisions in regard to returns to be made by the clerks were the same as in the act of 1842, except that they were to be made to the Secretary of the Interior, as directed by the act of 1849, instead of to the Secretary of the Treasury. Since the act of June 22, 1870, creating the Department of Justice, the returns have been made to the Attorney General, and supervision of these accounts has been exercised by that officer of the Government."

Referring then to the fee bill of February 26, 1853, as found in section 823 et seq. of the Revised Statutes, the court proceeds: "Upon an examination of the statute it will be seen that it applies to taxable costs in all ordinary litigation, whether at law or in equity or admiralty, and undoubtedly governs the taxation in all actions, suits, and proceedings, civil and criminal, in personam and in rem, in the courts of the United States. But it has not usually been considered, at least in this district, as applying to certain special and peculiar cases, of which the courts have jurisdiction, where only the party asking for the right or privilege is before the court, and from the nature of the case no costs are taxable as in ordinary litigated suits. Of such a character are proceedings under the naturalization laws, under the shipping commissioners' act, and applications to be admitted to practice as an attorney. Thus Judge Shepley early refused to allow the clerk to tax costs by the fee bill on applications under the shipping commissioners' act of June 7, 1872 (17 Stat., 272; Rev. Stat., sec. 4544), for the money and effects of deceased seamen deposited in the circuit court by the shipping commissioner.

"In respect to the naturalization cases, it has never been hitherto understood, either by the judges or the departments, that the fees of the clerk were for services rendered in his official capacity. At times, especially before elections, these applications are extremely numerous. The papers are usually prepared by the parties themselves or their friends, or more frequently by agents of candidates. The hearings are ex parti, at no stated times, and it is rare that any person appears in opposition. It has, therefore, been necessary, both in the interest of the applicants and for the due and orderly execution of the law and to enable the court to dispose of the cases, that the papers should be looked over and corrected by some person familiar with the law and practice, and in many instances that the witnesses should be examined before the cases were presented to the court for final action. It was for this service that the clerk has been allowed to make these charges to the parties. These are duties which the court has the undoubted right to have performed by some other person than the presiding judge.

"In these cases the clerk acts rather as a person appointed to assist the court in exercising its functions, like a master or examiner in an equity cause, or an assessor in admiralty, or an auditor in a suit at law. It is the universal practice of all courts of large jurisdiction to appoint special officers at the expense of the parties, to make inquiries, investigate details, examine papers, take accounts, make computations, and to perform ministerial acts. Their reports when returned into court and accepted become part of the case, and form the basis of the orders and decrees of the court in the cause.

"It was with this view, to regulate the practice in naturalization cases and define the duties required of the clerk, that Judge Sprague in 1855 adopted the following rules, which have ever since been in force:

"*Ordered*, by the court, that applications by aliens to be admitted to become citizens of the United States shall be presented to the court while in session, and that proof of the facts whereof the court is required by law to be satisfied shall be made by at least two credible and disinterested witnesses, who are citizens of the United States, to be produced and examined in open court.



*“Ordered, that before such applications are presented, all necessary papers shall be filed with the clerk, who shall report to the court when the application is made, and that he has examined the same, and whether they are all in due form and in conformity with the requirements of law or how otherwise.”*

This fact, as to these rules made in 1855, was not made a part of the agreed statement of facts, but the counsel in the cause, in this court, stipulated in open court that the facts should be taken as agreed.

The opinion of the court then proceeds: “It is for services rendered under these rules, and as a special officer of the court, and not as clerk, that these fees have been permitted. They were not duties pertaining to the office of clerk. They could have as well been performed by any other person designated by the court for the purpose; as by the district attorney or a commissioner of the circuit court, or an attorney, or any suitable person not an officer of the court.”

Reference has been made to the circular of Attorney General Devens of January 14, 1879, issued to the clerk. In it he says, referring to section 833: “This language embraces every possible fee or emolument accruing to you by reason of your official capacity and does not allow the withholding of any. Whatever is done for you that you could not do if out of office has an official color and significance that brings it within the compass of the language of the statute.” This is undoubtedly a forcible and accurate statement of the meaning of the statute. But the naturalization fees do not come within this rule. They did not accrue to the clerk by reason of his official capacity, and were for work which might as well have been done by him when out of office as when in. It is also to be noticed that this circular calls upon the clerk for “a statement of sums received for searches, for all copies of naturalization papers and oaths, and all other sums received through your office,” but makes no mention in terms of naturalization fees. (Regulations Department of Justice, 1884, p. 223.)

No complaint of these fees ever came to the ear of the court from any quarter. On the contrary, this service performed by the clerks has been of great advantage to those seeking to be admitted as citizens. It has had the effect, as originally intended, to simplify the process of becoming a citizen and to make it more expeditious and inexpensive. It saves the parties the expense of employing an attorney, and the fee charged therefor is much less than would be allowed by the fee bill, if the application is to be treated and entered on the docket of the court as an ordinary suit. In rejected cases no fee has been charged. This practice has prevailed for more than 40 years, ever since the act of 1842, which first required returns, and has been perfectly well known to everybody conversant with the courts. It was begun by Judge Story and Judge Sprague and has had the approval of all the judges of this district since their day. It has also had the sanction, successively, of the Department of the Treasury, the Department of the Interior, and the Department of Justice. Until this suit was brought it has never been called in question by any accounting officer of the Government; nor has Congress seen fit to put a stop to it by legislation. This construction of the statute in practice, concurred in by all the departments of the Government and continued for so many years, must be regarded as absolutely conclusive in its effect. (Edwards's Lessee v. Darby, 12 Wheat., 206; United States v. Temple, 105 U. S., 97; Ruggles v. Illinois, 108 U. S., 526; United States v. Graham, 110 U. S., 219.)

It was stated at the bar that a bill was introduced in the last Congress to require the clerks to make returns of all fees which they should receive for naturalization and as masters and commissioners, but failed to become a law. If a change in the practice should be thought desirable, it is obvious that it should be made by Congress and not by the courts.

“It is also to be noticed as significant that the clerks of the courts of Massachusetts, under a fee bill much like ours, and a statute requiring them to make to the county treasurer yearly a return ‘of all fees received by them for their official acts and services,’ were never required to include in their returns the fees received in naturalization cases. (Rev. Stat. of 1836, chapter 88, sec. 15; Gen. Stat. of 1860, chapter 121, sec. 22.) This was changed by the act of 1879 (chapter 300), which defined what the fees in such cases should be, and directed the clerks to include them in their return.

“The decision of the court is that, upon the agreed facts in this case, this action can not be maintained.”

Viewing the whole subject in the light in which it appears on the face of the statute, in regard to the fees of the clerks, we are met by a fact that section 823 of the Revised Statutes, taken from section 1 of the act of February 26, 1853 (chap. 80, 10 Stat., 161), provides that “the following and no other compensation shall be taxed and allowed” to clerks of the district courts. This applies *prima facie* to taxable fees and costs in ordinary suits between party and party, prosecuted in a court. There is no specification of naturalization matters in the fees of clerks. From as early as December, 1839,

the practice set forth in the agreed statement of facts has been obtained in the district court in Massachusetts of charging the fees of \$1 and \$2 as gross sums, in naturalization proceedings, without any division for specific services, according to any item of the fee bill. The act of March 3, 1841, before referred to, the first one on the subject of returns, implied that there should be reports of "fees and emoluments" by the clerk to the Secretary of the Treasury. The act of May 18, 1842, provided for semiannual returns to that officer, and included, specifically, fees and emoluments under the bankrupt act, but the clerk never has included in these returns his fees and emoluments for naturalization proceedings, and his action from 1842 to and including 1884 has been with the knowledge of the successive district judges, to whom his accounts have been semiannually exhibited.

From 1842 to 1849 these accounts went to the Secretary of the Treasury; from 1849 to 1870 to the Secretary of the Interior, and since 1870 they have gone to the Attorney General. From 1856 the statute has required that these accounts before going forward "shall be examined and certified by the district judge," and that after being sent to the several heads of departments they shall be subject to revision on their merits by the accounting officer of the Treasury Department. The agreed statement of facts shows that this course has been pursued; that the district judge has examined and certified the accounts knowing that they did not include naturalization fees, and that those accounts had been revised on their merits by these accounting officers for this long series of years, and been examined and adjusted by them with the naturalization fees not included.

With this long practice, amounting to a contemporaneous and continuous construction of the statute, in a case where it is doubtful whether the statute requires a return of the disputed fees, judges of eminence, heads of departments, and accounting officers of the Treasury having concurred in an interpretation in which those concerns have confided the surety and the present bond, as well as his principal, had a right to rely on that interpretation in giving the bond; and the semiannual accounts of the principal having been actually examined and adjusted at the Treasury, with the naturalization fees excluded, down to and including the one last rendered five months before this suit was brought, a court seeking to administer justice would long hesitate before permitting the United States to go back, and not only as against the clerk, but as against the surety on his bond, reopen what had been settled with such abundant and formal sanction.

This principle has been applied, as a wholesome one, for the establishment and enforcement of justice, in many cases in this court, not only between man and man, but between the Government and those who deal with it, and put faith in the action of its constituted authorities, judicial, executive, and administrative.

In *Edwards's Lessee v. Darby* (12 Wheat., 206, 210) it was said: "In the construction of a doubtful and ambiguous law, a contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect." To the same effect are *United States v. Dickson* (15 Pet., 141, 145); *United States v. Gilmore* (8 Wall., 330); *Smythe v. Fiske* (23 Wall., 374, 382); *United States v. Moore* (95 U. S., 760, 763); *United States v. Pugh* (99 U. S., 265, 269); *Hahn v. United States* (107 U. S., 402, 406); and *Five Per Cent cases* (110 U. S., 471, 485). In the case of *Brown v. United States* (113 U. S., 568) the same doctrine was applied, the cases in this court on the subject being collected, and it being said, that a "contemporaneous and uniform interpretation" by executive officers charged with the duty of acting under a statute "is entitled to weight" in its construction, "and in a case of doubt ought to turn the scale." A still more recent case on the subject is *United States v. Philbrick* (ante, 52), where this language is used: "A contemporaneous construction by the officers upon whom was imposed the duty of executing those statutes is entitled to great weight; and since it is not clear that that construction was erroneous it ought not now to be overturned."

Judgment affirmed.

Now, then, a single point further—what was this change made for—and then I am through. I admit that the statute itself before the change did not say that the judge should be paid his "actual expenses," but by the same rule of construction prior to this time we always did construe it to mean that he had to set up the items of his account showing how much money he had expended. The law was changed and the word "reasonable" was put in—not exceeding \$10—his reasonable expenses. From that time to this that is the construction we claim has been put upon that statute, and now we are asked to say that the legislative body of this country passed

a law that did not mean anything, made a change in the phraseology of the statute that it is claimed will have no effect, and that Judge Swayne shall be punished for having understood one of the first canons of construction of the law, viz, that when the legislature changes the phraseology of a statute the court shall hold, must hold, that it is done for some purpose, and that the statute amended does not stand as the statute before it was amended.

I cite a case that came to my mind the other day, and I went over to the Supreme Court and put my hand on it in a minute, for I remembered it 30 years ago when I came up against the question and got far the worst of it, standing in the position that the gentleman from Pennsylvania [Mr. Palmer] now stands. I refer to the case of the State, on the Complaints, etc., *v. Gray* (8 Blackford's Indiana Reports, p. 273), where the court lays down the rule that in every case where the phraseology of a statute has been changed the court will construe it to have been done for a purpose. That case is as follows:

THE STATE, ON THE COMPLAINTS, ETC., *v. GRAY*.

Appeal from the Tippecanoe circuit court.

DEWEY, J.—This was a prosecution for bastardy against Gray. The complaint was made by Mary Anne Welch before a justice of the peace of Tippecanoe County; it charges Gray with being the father of a bastard child, of which the complainant had been delivered; that she was an unmarried woman, and was, at the time of making the complaint, a resident of Tippecanoe County, and that the child was with her. The justice issued his warrant; the defendant was taken, and an examination was had before the justice. It appeared in the course of the examination that the complainant arrived in Lafayette, in Tippecanoe County, on the day on which she made complaint, and that she came from New York, where she had previously resided. The justice found the defendant guilty, and ordered him to give bond, etc., which, not being complied with, he was recognized to appear before the circuit court. He appeared accordingly, and, on his motion, the prosecution was dismissed for want of jurisdiction in the justice of the peace and in the circuit court.

It is urged, in vindication of the decision of the circuit court, that it did not appear that the complainant was a resident of this State.

As the law stood previously to the late revision of the statutes the objection was valid. The language of the former statutes was, "that on complaint made to any justice of the peace in this State by any unmarried woman resident therein," etc., the justice should proceed as therein stated. (R. S., 1831, p. 285; R. S., 1838, p. 330.) The first section of the present statute provides that when any woman who had been delivered of a bastard child, or who is pregnant with a child which if born alive will be a bastard, shall make complaint to any justice of the peace against the person whom she accuses of being the father of the child the justice shall issue his warrant etc. (R. S. 1843, pp. 363, 364.)

It is contended that the change in the phraseology of the statutes is so slight that it shows the legislature did not mean to change the law as regards the residence of the complainant. We can not think so. The qualification of the residence of the complainant in this State, essential to the support of a prosecution under the former acts, is omitted in the present statute, and we are not at liberty to view the change as unmeaning. We are bound to believe that the remedy was designedly enlarged.

But it is further contended that if any change of the law was meant to be made by the late revision the complainant is now required to be not only a resident of the State, but to have a legal settlement in the township where the prosecution is commenced.

This position is attempted to be sustained by the provision of the third section of the bastardy act, which is that if the accused person shall be adjudged by the justice to be the father of the bastard he shall, among other things, "enter into bond to the overseers of the poor of the proper township in the county where such woman (the complainant) has her legal settlement" conditioned to save the county harmless, etc., and by the provision of the twenty-ninth section, that the money on the judgment against the putative father, in a prosecution carried on by the overseers, shall be paid to the overseers of the poor of the township where the complainant shall have "her legal settlement."

We do not view these provisions as having any bearing on the question of jurisdiction. They are directory as to proceeding subsequent to the commencement of the prosecution and must be followed where the facts of the case will admit of it. If the complainant must have a legal settlement before she can institute a prosecution for bastardy, a year's previous residence in some county of the State will, in general, be necessary. Such a construction of the statute would, in many instances, defeat what we conceive to be its object—the extension of the remedy afforded by the former statutes. It would certainly be inconsistent with the first section, which points out the description of persons entitled to prosecute and which confers jurisdiction on justices of the peace. The residence of the complainant is immaterial. The circuit court erred in dismissing the cause.

Per curiam.—The judgment is reversed with costs.

Cause remanded, etc.

D. Mace for the appellant.

E. H. Brackett and A. M. Crane for the appellee.

Now, then, what have we? This statute provided for the payment of the expenses of the judges. It had been construed and acted upon as though the word "actual" were in the statute, and then came the legislature and practically struck out the word "actual" and put in the word "reasonable." Now, I say there is not one particle of legal testimony in this record that shows any action under the charge. I say that every particle of that testimony that went to show what Judge Swayne did expend and what he did not expend was illegal, incompetent, and futile. Why? Because the statute provides that he shall be paid his reasonable expenses, and there is no evidence tending to show that he took a dollar in excess of his reasonable expenses. So, Mr. Speaker, instead now of protecting the courts of this country by impeaching this man, the argument is made here that if somebody comes around in your dooryard and slanders you and says you are a liar or that you have cut down a shade tree or are a thief, you must go and hunt up the prosecuting attorney—that is the argument of the gentleman from Pennsylvania [Mr. Palmer]—and say: "For God's sake, Mr. Prosecuting Attorney, indict me in the grand jury room, so that I may have an opportunity to clear my skirts." That is the argument that is made here—tarnish this man, put him to an expense that will be ruinous, blackmail him to the extent of his expenses in any event, so that he may have a chance to clear his skirts. That is the argument. If you would protect the courts of the United States in the dignity in which they stand, if you will add another period of 70 years to a period of nonimpeachment in the United States, teach the little people who are disappointed at the judgments of the judges of the courts of the United States that their remedy shall not be first in a political convention [applause], then in a political legislature, and then in an impeachment of his character—an impeachment begged for, plead for, prayed for. God alone knows the efforts that have been made. I do not say that any of them are illegitimate, but I do say that if there was here a worthy case for this impeachment there would be no necessity for this personal appeal to Members. [Prolonged applause.]

Mr. PALMER. Mr. Speaker, I yield 30 minutes to the gentleman from New York [Mr. Cockran].

[Mr. Cockran of New York addressed the House. See Appendix.]

Mr. GILLET of California. I yield 15 minutes to the gentleman from Pennsylvania [Mr. Moon].

Mr. NEVIN. Mr. Speaker, will the gentleman yield to me five minutes now?



Mr. GILLET of California. Yes.

Mr. BRANTLEY. Will the gentleman yield to me to make a request of the House?

Mr. NEVIN. Yes; I yield for a request.

Mr. BRANTLEY. Mr. Speaker, I ask unanimous consent to revise and extend in the Record the remarks that I delivered yesterday.

The SPEAKER pro tempore. The gentleman from Georgia asks unanimous consent to extend his remarks in the Record. Is there objection?

There was no objection.

Mr. NEVIN. Mr. Speaker, although a member of the committee to which this matter was referred, and although I have followed it carefully from its inception until now, I purposed to say nothing to the House on the question until the gentleman from Pennsylvania [Mr. Palmer] this morning mistakenly quoted me as favoring at least three of these articles of impeachment. He said that when the question had been asked before the subcommittee as to what was the custom of the judges on the Federal bench as to certifying to \$10 a day or their actual expenses, and when he had held that that question had nothing to do with this case, that the members of the Judiciary Committee, myself among the number, had agreed to the correctness of that holding. I want to say that I disagreed with his holding then, and I differ from him now.

If this statute were so clear, so explicit, so open to but one construction and conclusion as that anyone who did anything other than to certify the actual and necessary expense of each day would plainly violate the law, then I concede the gentleman's proposition that it would make no difference whether one judge or a hundred judges or all the judges together had done so, they would have in such case violated that statute. Such a construction of the law being conceded, it is true that their action and conduct would throw no light upon the question as to Judge Swayne. But the very question at issue before that subcommittee was, did he violate the law; did other judges understand and so construe the statute; did other Federal judges certify as did Judge Swayne? To hold that you could not prove this to be the custom was simply begging the question. The gentleman from New York [Mr. Cockran], who has just spoken, says that he does not believe that Judge Swayne is liable to impeachment or that he should be impeached because he construed the statute in the way suggested, viz: That for each day a judge held court as set out in the statute he might receive for his expenses \$10 a day upon so certifying to the same. The gentleman from Pennsylvania [Mr. Palmer] differs from that construction. Now, the question that was presented before this subcommittee by that question was, "How have other Federal judges construed it?" This was the very question submitted.

I read from the printed record of the case:

Q. I observe here that the charge certified by Judge Swayne for any particular number of days seems to be at the rate of \$10 a day.—A. Yes, sir.

Q. Is that usual?

Then said Mr. Palmer:

I do not think that is of any consequence—



And proceeds to rule it out. Now, was that question proper? In my judgment unquestionably so. There can be no doubt as to its competency. Its weight is a different matter. The object of the question was to show what the judges believed that statute meant. If it had been a contract coming up before some nisi prius court, and the question had been presented, What does the contract mean? the court would say, "How have the parties construed the contract? How have they acted and operated under it? If it is so clear there can be but one construction, that is the end of it; but if it is open to two or more constructions, then the question always arises, What have the parties themselves done?"

Here was a statute open to more than one construction. Now, what have the judges held as to it? They might have passed upon it by a judicial decision. They can just as well determine it by their acts; and if it be true that a large majority of them—64½ per cent the gentleman from Ohio [Mr. Grosvenor] said this morning—have construed the law to permit them to certify \$10 a day, day in and day out, as their legitimate expense, that would clearly show that Judge Swayne had been guilty of no corrupt practice, and had in his mind no corrupt intent. And yet the gentleman bases three articles of impeachment upon the fact that Judge Swayne has certified \$10 a day instead of his actual itemized expenses.

Mr. PALMER. I call the attention of the gentleman from Ohio to the fact that the gentleman from Pennsylvania does not base the articles on that, but that the Judiciary Committee have presented these three articles. I do not care to be held up to odium alone. I want my brethren on the Judiciary Committee to help share some of it with me.

Mr. NEVIN. Oh, certainly.

Mr. PALMER. There seems to be some question here whether Judge Swayne or myself is on trial.

Mr. NEVIN. I did not mean that the odium should be borne by you alone. Let all those who are responsible for the act accept the responsibility. [Applause.]

The SPEAKER pro tempore. The time of the gentleman from Ohio has expired.

Mr. MOON of Pennsylvania. Mr. Speaker, I desire at the beginning to congratulate this House on the fact that we are now reaching the end of this discussion, and to express my judgment that the three or four days already consumed have done much to render clear and lucid the voluminous amount of testimony taken by the subcommittee in the case. I believe we are reaching nearer and nearer to the vital facts involved therein, and I trust when the time arrives to-morrow for taking a final vote that all that exists in this mass of testimony will have been thrashed out to the absolute comprehension of every Member of this body who is called upon to vote upon these important resolutions. I confess, Mr. Speaker, that I approached the consideration of this case, as I believe a great many Members upon the floor of this House did, prejudiced against, not Judge Swayne, but against any man who should be so accused. I have been educated in so absolute a belief in the purity of the judiciary that I look naturally with distrust upon any man against whom accusations of this kind could be made, and when the gentleman from Florida [Mr. Lamar] in his first resolution recounted the various crimes committed by Judge

Swayne, when I found therein the allegation that he was entirely unfit to be a judge by reason of incapacity, by reason of his mental and judicial incapacity, and by reason of his alleged flagrant disregard of every principle of justice, I was disposed to look with distrust upon him and believed that his conduct ought to be inquired into.

When I hear on the floor of this House the declaration of the gentleman from Florida that Judge Swayne is the most lawless man in that State; when I read his interview with an Atlanta reporter in which he gives to the world the warning that Cæsar had his Brutus, Charles the Second his Cromwell, and finished it with the intimation that if we refused to impeach Judge Swayne he will find lurking in the glades of Florida the arrow of a Tell or the dagger of a Corday; when the distinguished gentleman from New York [Mr. Cockran] in his concluding remarks to-day added the last degree of infamy to his name, crowning him as the American Jeffreys, it seems to me absolutely necessary, as a preliminary inquiry, to inquire who Judge Swayne is.

Mr. Speaker, we have before us only the printed testimony in this case, and I have had some experience in the investigation of such testimony. I have always found it to be very unsatisfactory as compared with the testimony of the living witnesses. It is cold, neutral, and impersonal.

We do not see the characters; we do not understand the motive of their testimony, and I have made it a cardinal principle of investigation, first, in inquiries of a judicial nature, to discover first who are the parties involved, and, second, to discover what is the accusation contained in the testimony upon which we are called to decide.

Therefore, proceeding, Mr. Speaker, to the investigation of who Judge Swayne is, and to the examination of his record for the purpose of ascertaining whether he is the most lawless man in the State of Florida, whether he is the American Jeffreys, my attention was attracted at the outset by this fact, as it appears, in that in 1897 the most distinguished gentlemen in the city of Philadelphia, which I have the honor in part to represent here—her most distinguished citizens and most eminent lawyers thought that Judge Swayne was a fit man to adorn the Supreme Bench of the United States. I find a group of letters written by famous men in the judicial history of the State of Pennsylvania recommending him to this position. I find a letter written by F. Carroll Brewster, at one time an eminent judge in our State, subsequently our attorney general, and a brother of Benjamin Harris Brewster, the Attorney General of the United States under the Arthur administration—I find a letter written to President McKinley saying that he would honor his administration in appointing this man to that eminent position. I find a letter to the same effect from the Hon. Hampton L. Carson, the present eminent attorney general of Pennsylvania, in 1897. I find that Judge Fell, of our supreme bench, a gentleman whose career all of my colleagues from that State will admit is an honor to the State and who has adorned the judicial history of Pennsylvania, a man from whom no money, no position, and no influence could purchase a recommendation, and I find that he said to President McKinley that this man Judge Swayne was fit to occupy a seat upon the Supreme Court Bench of the United States.

Mr. LITTLEFIELD. "Learned, able, and safe."

Mr. MOON of Pennsylvania. Yes; among them was Judge Ashman, a man of distinguished character, and other men of broad prominence, including the mayor of Philadelphia, all eminent men in our judicial and civic history, who urged the appointment of this man to that exalted position.

And, Mr. Speaker, I find from the investigation of this testimony—and I would like to commend the careful reading of these pages to every Member on the floor of this House before he assumes the solemn responsibility to say by his vote that this man is a lawless man—I find that in 1899, after Judge Swayne had discharged his judicial duties in this district for 10 years, the entire bar of the city of Pensacola, Fla., sent separate individual letters to the President of the United States urging the appointment of Judge Swayne to the position then vacant on the circuit court judgeship in that district—the judicial district including the State of Florida.

That was in 1899, 10 years after this man had lived among them and had discharged his duties in his official capacity, and I desire to take the time of the House for a moment, even at the risk of tiring Members, to read one or two extracts from those letters, extracts that bear upon the very question under consideration, the character of the man. I desire to read one from the very prosecutor in this case, the man whose hand never left the grip of these charges until they were ushered into the door of this House. Mr. Liddon, of the firm of Liddon & Egan, on February 1, 1899, wrote as follows:

We most earnestly urge the appointment of Hon. Charles Swayne, our present United States district judge for the northern district of Florida, to the position of circuit judge of the fifth circuit, under recent act of Congress creating an additional circuit judge.

Judge Swayne has served in his present position for the past 10 years and made a most excellent judge, so that he is well qualified by experience for the circuit judgeship. We feel sure his appointment to the position would meet with the hearty approval of the bar and people of our circuit.

I pick one other at random, from Messrs. F. W. Marsh and Buckner Chipley, in which they say:

We can conceive of no more appropriate appointment than this would be, reflecting credit upon the United States judiciary, and being a just promotion of one who has so efficiently and ably served the interests of the people throughout this portion of the United States. As district judge he has received the respect of every person who has had the pleasure of his acquaintance, and his personal attributes are well fitted for the position.

Mr. Speaker, there were at that time 20 members of the bar of Pensacola, and exactly 20 members of that bar wrote these letters—absolutely every member of the bar of the city of Pensacola. [Applause.] I therefore felt, Mr. Speaker, justified in saying that, in so far as the character of the man attacked was concerned, we have been misled. I therefore stand here and say upon the basis of this testimony that I shall proceed to its investigation with the belief that Judge Swayne is a man of probity, that he is a man of honor, that he is a man of great judicial fitness and of the highest personal character, and I challenge any man among this representative body upon the floor of this House to establish his own character by more complete testimony than this. So much, therefore, for the personal and judicial character of the respondent. Now, let us proceed in the second place to consider the charges against him and the motive of the parties preferring them. Because, bear in mind, the investigation

here, in its last analysis and in its final disposition, must depend absolutely upon the motive that prompts both the actors and the accused in this proceeding. Bear in mind that it is an uncontradicted fact that Judge Swayne is 62 or 63 years of age. At the time these letters were written he was then 57 years of age, and, Mr. Speaker, it is a historical and a moral fact that men at the age of 57 do not change so suddenly. It seems to me to challenge human credulity that Judge Swayne should within two years have become the monster that he is depicted.

I say, Mr. Speaker, it seemed to me incredible that this man, in this brief period of two years, could have fallen from the high estate that these gentlemen have given him to a position like that, and I began to make an investigation as to what had brought about this revolution of feeling. I discovered that something had happened, but it had not happened to Judge Swayne. In 1902—and I speak now historically, though I may talk more fully on this subject if the time permits—Judge Swayne inflicted a just and a deserved punishment upon a wealthy man in the city of Pensacola, a bank president named O'Neal. I repeat I shall not now speak of the details of the O'Neal prosecution further than to state that O'Neal then and there began to put into effect an avowed intention of punishing Judge Swayne for having dared to inflict upon him the justice of the law, and I desire to call the attention of the House particularly to what followed. I speak entirely by the record when I say that O'Neal employed counsel at first, three of them, Messrs. Laney, Liddon, and Wentworth; that Mr. Liddon framed the resolutions to be passed by the Legislature of Florida; that Mr. Liddon was employed with Mr. O'Neal's money to go before the judiciary committee and make a speech, and Mr. Liddon personally solicited and lobbied with, he says, from 10 to 12 members of the legislature to secure the passage of these resolutions; that Mr. O'Neal employed what might be termed a professional lobbyist for that purpose; he employed a man who had been transcribing clerk in the house, employing him because of his large acquaintance with men of the house and particularly because his uncle was an influential member of that body. He employed him for 16 days and paid him \$10 a day for lobbying that bill through the Florida Legislature.

Mr. O'Neal, in addition to that, was upon the ground during all this period of time. He was giving champagne suppers to the members of the legislature. He spent from \$200 to \$300 in champagne for that purpose, and actually sent champagne individually to particular members of the house for the purpose of influencing this legislation. All this is clearly established by the testimony. Now, therefore, Mr. Speaker, it seems to me that I am justified here in saying that these charges against Judge Swayne were conceived in personal malice; they were born and brought forth in legislative debauchery; that they were nursed and cradled in a spirit of virulent political animosity, and that they are now brought to the floor of this House with the threat that if we shall refuse to adopt them and refuse to clothe this illgotten, illborn child of sin with our name, and present it to the bar of the Senate as our legitimate offspring, the citizens of Florida will resort to assassination to accomplish his removal. I protest against it, and I will not be a party to such a proceeding. [Applause.] Now, Mr. Speaker, of course, I am perfectly willing to



agree that this contaminated origin does not necessarily damn these charges. It causes us certainly to look upon them with suspicion rather than upon the man with suspicion. I say that it does not damn them absolutely. We know that history, both sacred and profane, has taught so that great good may come even out of Nazareth, and it is still possible that there may be some foundation for accusations, notwithstanding the corrupt sources from which they emanate, and I therefore now proceed to discuss the only two remaining in which there seems, at this stage of the discussion, to be any vitality left, viz, that of residence and that covered by the Belden and Davis contempt proceedings.

It seems to me that a popular misconception, a widespread misunderstanding of the testimony upon the question of residence has gained a footing in this House. I have heard a great many people say, and it has been argued here with great earnestness, that Judge Swayne admitted that for two years he was not a resident of his new district. I say that Judge Swayne never admitted anything of the kind, and I want to correct a popular misconception or misapprehension upon that point.

Judge Swayne said, and I challenge you to show that he did not, that when he went from St. Augustine to Pensacola in 1894 he stored his furniture; that he would not move his furniture there because he believed that Congress would restore his district, but that he immediately acquired a residence in the city of Pensacola, the chief city in his circumscribed district, and that in all the various assignments made by him throughout these various four States contiguous to his territory he always registered himself as from Pensacola, and that he began at that time to take steps to establish a home at that place. I refer to this particular point because I happen to know, from conversations with very many Members of this House, that that impression has gotten abroad, that while he believed that a subsequent Congress would restore his district he did not attempt to acquire residence in his new district. That is not true and there is no vestige of testimony in this case of any kind or nature upon which it can be truthfully based. Legally and actually, residence is a question of intention, and nonresidence by a judge in the district over which he presides is made a high crime and misdemeanor, and in order to convict this judge of that crime at the bar of the Senate we must establish by this testimony, beyond a reasonable doubt, that he did not reside in his district.

Does there exist a doubt on this subject here? If so, the legal consequence and effect of that doubt is that the charge falls. Why, Mr. Speaker, can it be seriously argued that there is no reasonable doubt upon that question in this House when the Judiciary Committee itself, from whom these charges emanate, stood 8 to 8 upon that subject, and a powerful minority report contends that his residence is fully established?

Mr. LITTLEFIELD. Nine to eight.

Mr. MOON of Pennsylvania. Well, I am safe in saying they stood at least 8 to 8. Therefore, so far as the Judiciary Committee were concerned, there was certainly a reasonable doubt. I am safely within my right when I say to-day either a majority, or at least a respectable minority, here believe that his residence was in Pensacola during that time, and therefore the present attitude of this House estab-



lishes the fact that there is reasonable doubt. And, gentlemen, in the solution of that reasonable doubt, if you wish it solved, what testimony would you like to have to solve it? I confess if I were upon the bench as a judge I would say, "Bring me testimony of his neighbors; bring me testimony of the people with whom he lived, testimony of the people who did business with him, of the people who knew his coming in and going out from day to day, and let us know what these men understood about him." That would resolve all reasonable doubts in my mind, and I propose to bring you that testimony. I refer again to these letters. When in 1899 the united bar of Pensacola said to President McKinley, "This man is a man of the highest attainment, this man is a man fit to adorn the circuit bench, this man is a law-abiding citizen," no argument in the world can convince me of the fact that they knew at that time that he was a criminal, and that instead of being advanced to the circuit court bench he ought to be advanced to the bar of the Senate for trial for high crimes and misdemeanors. They never dreamed for a moment at that time that he was not a citizen of the State, and that, gentlemen, was in 1899, five years after the district was changed.

I say, therefore, upon that point, resolving that reasonable doubt, the testimony of the neighbors of Judge Swayne, the lawyers of his court, given before any question arose of impeachment, is conclusive. Therefore I ask you to say, gentlemen, that upon this specification, whatever you may do with regard to the others, you can not present him to the bar of the Senate for trial against the protest, against the united evidence of the members of the bar of Pensacola. Of course everybody concedes that immediately after 1899 he did acquire a residence and without any doubt complied with all the requirements, even to the minds of the most skeptical, and I repeat that beyond all reasonable doubt his legal residence, his strict compliance with all the requirements of the law, has been fully and absolutely established.

Respecting the contempt proceedings, the second important charge in this proposed indictment, I suppose there is nothing about this whole case that has attracted so much attention as the punishment of Hoskins, Davis, and Belden for contempt of court in 1901, and it does seem to me, Mr. Speaker and gentlemen, there never was a clearer case presented, and that there has never been any legal question that I have heard discussed in which I have seen so much misapprehension existing as upon that. The gentleman from Ohio [Mr. Grosvenor], I think, fittingly and aptly stated this morning that upon a legal proposition this body, largely composed of lawyers, does seem to be very much astray. Now, let me give you a simple narrative of what occurred; but first of all, gentlemen, let me show to you what the testimony reveals. Why, the case of Florida McGuire is the most remarkable case in this country. It is the *Jarndyce v. Jarndyce* of American judicial history. It has been in litigation, according to the books, for 20 years. Prior to the time Judge Swayne was called upon to try it it had been tried 11 times. The time that they discontinued it made 12 times, and they subsequently retried it, which made 13. And let me tell you another thing, that every other judge that attempted to try that case was maligned and blackened by these people. They accused every judge who previously tried that case of holding property in that tract. They accused Judge Maxwell and Judge McClellan and assailed them with the same bitterness with which they assailed Judge Swayne.

They carried the previous cases to the circuit court of appeals, and every time they lost their case, and let me tell you further that, after discontinuing this case and beginning it again, when the time for trial arrived they did what they did not attempt to do here—they filed of record a charge that Judge Swayne was a party in interest upon the same testimony presented to us—they made it a question of fact in the cause. It was decided against them, and it was carried by them to the circuit court of appeals, and the circuit court judge sustained the decision of Judge Swayne and said that the testimony revealed that he had no interest to disqualify him; that he dare not under the facts recuse himself, and that he ought to try the case.

Therefore all this speculation, all this dramatic oratory upon the question of the necessity for Judge Swayne's recusing himself in that case, is settled by the decision by the highest court of appeal to which it has yet gone. Now, with that knowledge of the facts in this famous case, let me tell you what occurred in this court in that November term about which so much has been said. I appeal to the record to establish what you know, that in October they wrote a letter asking him to recuse himself, telling him that intangible rumors were floating about town. You know that he came to Pensacola on the 5th, and on the day after his coming he replied to their letter, giving them all of the facts of the case and establishing fully his right to try the case. The question has been asked here, Why did he not answer that letter before? Why, if you stop to reason for a moment, gentlemen, you will wonder almost why he did not punish them for contempt for writing that letter. That is not the way to take a step in a legal proceeding, to write a personal letter to a judge. The law of the State of Florida points out clearly the steps that are to be taken in order to get a judge to recuse himself. You must follow the practices of the court; you must substantiate with affidavits all allegations; you must reduce floating, intangible rumors into solid substances; you must affix your affidavit to that protest, so that in case of misrepresentation you will be guilty of perjury. And these men did what? They wrote a personal letter, in violation of every principle of judicial ethics and in violation of every principle of practice. They wrote a personal letter to Judge Swayne asking him to recuse himself.

Gentlemen, they knew how to obtain his recusation. They had tried it on a previous occasion in this case. They tried it subsequently, and made a record; but on this occasion wrote a letter. When he came he called them before the bar of the court and after stating fully that he had no interest, either legal or equitable, in this property, he notified them that there was no formal motion of record for him to recuse himself, and therefore when the case was reached he should try it, indicating to those people that if they wanted to make a legal record upon this point, there was plenty of time to do it. He said in effect, "You have only written to me personally; you have appealed only to the judicature of my own mind. Now I tell you I do not own the land. I tell you all the circumstances, that I attempted to purchase the land, or my wife did. I found there was a quitclaim deed instead of a warranty deed, and on inquiry I found that it was in the tract involved in my court, and I abandoned all thought of the purchase instantly. If you desire to raise this question in the case you have not appealed to the jurisdiction of the court by proper

pleadings." Why, any lawyer upon the floor of this House will admit that in so solemn a proceeding as that, which refers to the jurisdiction of the court, to try a cause it must be put upon the record by formal and regular proceedings and can not be left to chance and to loose letters and vague rumors.

Now, one thing seems to have been lost sight of. They did not content themselves with writing a letter to Judge Swayne, but also wrote to Judge Pardee. They told Pardee what they had done. Pardee gave them instructions. Pardee said to them: "All right, go on and make your record. It is a matter reviewable; you can not suffer any injury by it." And yet in the face of this positive direction from Judge Pardee, of the circuit court, and this plain intimation of Judge Swayne, the trial judge, what did they do? They did nothing.

They abandoned then and there all steps toward requesting that he recuse himself. They accepted as absolute verity his statement in regard to the title and did not indicate any doubt of his statement at all. Thus matters proceeded until Saturday afternoon, when the case was called for trial, and, when application was made for a continuance until Thursday ensuing, Mr. Davis says Judge Swayne was disposed to permit it. He wanted to grant upon their motion the delay requested, but Mr. Blount, representing the defendant, bitterly opposed it. He said, "I have tried this case 11 times; here I am prepared to try it now, and I have subpoenaed my witnesses. I know that the witnesses for the plaintiff, or 90 per cent of them, live in Pensacola and can be produced in court forthwith," and he opposed any continuance, except under the rules of the court. Blount was within his legal rights, and Judge Swayne was compelled to deny the motion for continuance except for cause shown. He did not, however, order the case to be tried, but said "Come in on Monday and make your application under the rules of the court—show proper grounds and I will grant your request." His conduct was in the highest sense judicial and fair. He refused their groundless request for a continuance because the opposing counsel insisted upon his legal rights and gave them an opportunity on Monday to show cause and evidenced a disposition to comply with their request.

This closed their proceedings in court; they did not then resume their protest against his right to try the case, and they had not filed any petition or made any record to that end; they had legally and wholly acquiesced in the truth of his statements and recognized his absolute qualification to proceed with the case, and they left the court room with the agreed purpose of coming into court on Monday morning and of resuming their application for a postponement to Thursday under the rules of court.

Now, Mr. Speaker, before proceeding to draw any deductions from these facts, let me call attention to a fundamental principle of law that has been entirely overlooked in this discussion. I regard it of controlling importance because in the minds of a substantial number of the Members here there exists this thought: Why did not Judge Swayne recuse himself, anyhow?

It was a delicate question; they had raised it, and whether they had any right to do so or not, he could very easily have acquiesced and had another judge try the case. There was no difficulty in that, and at the utmost it was a matter of indelicacy on the part of Judge Swayne.

And I fear there are people here who are of the opinion that the unlawful and revolutionary conduct of these attorneys is in some sense justified by that belief. Let me tell you, gentlemen, that that is not the law. I shall show you that the law required Judge Swayne to try that case, if there was no ground to recuse himself, as absolutely as it required him to refuse to try it if grounds for disqualification existed. He is appointed and sworn to try the cases in that district, and there can be no legal trial of any case in that district by any other judge under the act of 1850, providing for the assignment of judges, except for two causes, which must appear of record, namely, the illness of a judge or his disqualification to try the case.

Mr. LITTLEFIELD. You mean there could be no legal failure on his part, except for those two causes?

Mr. MOON of Pennsylvania. Yes; except for his disqualification or his sickness. And I tell you that in order to have recused himself from the trial of that case Judge Swayne would have been obliged to certify to Judge Pardee that he had an interest in that property which prevented him from trying the case, and then, gentlemen, there would have been a false certificate in this case, of infinitely more significance than those about which so much has been said. The law upon that point is clear and unmistakable. It is not left to the whim or the caprice or the mere judgment of the judge. He must be convinced of the fact that there are reasons for him to recuse himself, and bear that in mind, that any verdict rendered by a substituted judge where the ground for the transfer did not lie would be a mistrial.

Mr. LITTLEFIELD. The defendant had a right to insist that he should go on with the trial of the case.

Mr. MOON of Pennsylvania. Yes. Now, therefore, Mr. Speaker, this is the legal view of the situation. Now, as to the legal form of procedure for disqualifying a judge, the statutes of the United States have no provision upon this subject, and every lawyer knows that where the statutes of the United States are silent upon a point of procedure the statutes of the district in which the court is held prevail; and the statutes of Florida provide a method by which a judge shall be called to recuse himself, and under the rule of law of which I have spoken that method was the law of this case upon that point; and the law of the State of Florida provides that the application must be made by affidavit setting forth the facts relied upon, an affidavit by which the party making the application is responsible for their truth. It provides for a trial of this fact before the judge, the making of a record in the case upon this point, and the establishment of fact thereon by a judicial finding, which involves the question of the jurisdiction of the court, and is reviewable by the court of appeals.

Now, with this view of the duty of these attorneys and with this review of what they did, I will ask you to go with me, gentlemen, to that little grocery store in Pensacola on that November night; see that little corner grocery, ordinarily the scene of petty merchandising, transferred for some inexplicable reason into the consulting chamber of a counselor; see gathered around that counter these three lawyers engaged in what I shall consider a criminal conspiracy to defeat justice.

Mr. WM. ALDEN SMITH. Will the gentleman kindly name the three lawyers?



Mr. MOON of Pennsylvania. Mr. Belden, Mr. Davis, and Mr. Paquet. At that hour of night a writ was issued, after the courts were closed, at nearly 8 o'clock in the evening. First of all, a præcipe was issued, which is the custom there. Mr. Belden, who was sick in bed, was brought down from his hotel to sign that præcipe, and instantly a scurry was made for the clerk of the court. The clerk had gone home, of course. The courts were closed. The clerk of the court was found and told that that writ must be issued that night, apparently, as the testimony disclosed, against his protest. He was told it must be issued that night, and after the writ was obtained, bearing the seal of the court, a seal imposed at an hour, I venture to say, the parallel of which does not exist in the judicial history of Florida, the sheriff was sent for. The sheriff was found somewhere, and positive instructions were given to the sheriff that that writ must be served that night.

Mr. LITTLEFIELD. The case shows that Monday would have been ample time.

Mr. MOON of Pennsylvania. It does not need any argument to prove that, because Judge Swayne was to sit there on Monday to hear this case. They had an engagement in court with him on Monday to try the case. But, Mr. Speaker and gentlemen, here is the significant sequel of that remarkable proceeding: As soon as the sheriff has departed and the service was guaranteed, then little Mr. Prior paddled down to the newspaper office, with a paper scarcely yet dry, written by Paquet, which is heralded to the world the next morning, in flaming headlines, that there is a new move made in the Florida McGuire case, and which, in effect and in language, says that suit has been brought against Judge Swayne to test the title to a piece of ground, a suit for the possession of which is then pending in his court. Now, I want to state this proposition: If among any ten candid men of ordinary intelligence nine of them will not decide absolutely that the object of that suit was that newspaper publication, then I will vote for the impeachment of Judge Swayne upon this article. Bear in mind, gentlemen, that suit never was proceeded with any further. Bear in mind that the very præcipe itself was stolen from the office of the clerk, and to this day has never been returned. To use the language of the distinguished gentleman from Mississippi, whom I see before me, that famous lawsuit died a-borning. It was intended as the basis for the newspaper publication, and when the newspaper publication had been secured it died then and there.

I repeat, if it is not the judgment of every man of intelligence uninfluenced by partisan bias, the sole object of that suit, at that witching time of night, when churchyards yawn, was to give basis to the newspaper publication, I will vote for this article of impeachment.

Now, our opponents say, why did they discontinue the suit? It is very apparent to me. On the calm of that cool November Sunday morning, that quiet day in Pensacola, when these three conspirators looked calmly upon their nefarious work of the night before, when they saw what they had done to prepare a record for the continuance of that suit, they were aghast at their own handiwork. Why, the devil himself would not have had the hardihood to go in on Monday morning before Judge Swayne and say, "We have made a record, we



have given you grounds to recuse yourself, we have asserted that you are the owner of this land in order to obtain a continuance, and brought suit against you." It may be said to the credit of these men that when they saw the position in which they were placed they had but one thing to do. Paquet quietly gets out of town. Paquet shakes the dust of the Commonwealth off his feet and hies into Louisiana.

Mr. PALMER. Will the gentleman state that Paquet went home because his family was sick?

Mr. MOON of Pennsylvania. Oh, he didn't have to go before 8 o'clock the night before. His family was not so sick but that they could wait while he could join in the conspiracy on that Saturday night. [Laughter and applause.]

Now, gentlemen, that is the history of that case, and the decision of the circuit court of appeals in this case has left us but one question to decide. Bear in mind that these contempt proceedings in the lower court were fought on the ground that the court had no jurisdiction; that the bringing of the suit in the State court was not a violation of any rule of procedure that this judge could punish for.

The circuit court of appeals took that thing from under their feet; the circuit court of appeals said: "Yes, they were officers of the court, the court had jurisdiction of the parties and of the subject matter, and the only thing that was left to the discretion of the court was to say, was this action maliciously done, and was it intended to impede the course of justice?"

Now, if there is any man on the floor of this House who does not believe that it was maliciously done and done for the purpose of impeding the administration of justice, I do not comprehend his process of reasoning.

Another error of law has caused serious misapprehension here, for it is said by some Members here that, while up to this time Judge Swayne was clearly within his right, he is susceptible to impeachment because he exceeded the law in inflicting punishment. Never was a more dangerous and a more insupportable legal proposition advanced than that. I grant you that if that excess of punishment was done maliciously, or with a corrupt purpose, if you can show that he had hatred against these men, and that he distorted legal processes for the punishment of individual hatred and with corrupt mind, then it is an impeachable offense, but I want to say to you that there is nothing in this testimony upon which it can be based, and certainly the fact that he made a mistake of the law is not a scintilla of evidence in that respect.

I want to quote to you, Mr. Speaker and gentlemen, the leading case of impeachment in this country. There has never been an impeachment of a judge but that this has been cited, and if, perchance, this case should go to the bar of the Senate, as I hope it will not, I venture to say that the case I am about to cite will be regarded as the leading case on this question. Almost every lawyer acquainted with impeachment proceedings knows the case of Yates against Lanning, reported in 9 Johnson, New York.

The facts are these: Yates was a man of importance in New York. He was a master in chancery, he was a man of dignity and standing, and a member of the bar. For some contempt of court Chancellor Lanning imprisoned him. He immediately sued out a writ of habeas

corpus before Judge Spencer, and Judge Spencer discharged him. Judge Spencer held that the commitment was illegal. Chancellor Lanning declared that the discharge was illegal and imprisoned him again. He went back to Judge Spencer and he again discharged him. Again Chancellor Lanning, declaring that the judge had no right to do it, imprisoned the man the third time, whereupon Mr. Yates appealed to the supreme court of the State of New York, and the supreme court held that the commitment was legal and that the discharge on the habeas corpus was illegal; but Yates, not content, appealed from the supreme court of the State of New York to the court of errors and appeals, and that court of last resort said the man ought to have been discharged under the habeas corpus proceedings, that he never ought to have been imprisoned, and discharged Yates from custody. Now, if there ever was a case in the history of judicial proceedings where there was an evidence of malice in repeated imprisonment it existed in that case.

Yates brought suit against Lanning to recover damages for false imprisonment, and Chancellor Kent—that man whose name adorns the pages of American judicial history; that man at whose feet you sat and I sat in instructions in American law—delivered an opinion which has been a standard ever since, in which he said it was absurd to say that a judge could be punished for ignorance of the law; that if Judge Lanning believed that Yates was guilty it was his duty to punish him seven times or seven times seven if he believed it honestly, and if he believed judicially, that the discharge on habeas corpus was illegal and that it was absolutely beyond the power of any man to sue a judge under those circumstances. He did say that for a corrupt abuse of judicial power the court of impeachment was the place, but that this showed no ground for any such course.

Mr. LITTLEFIELD. That the case did not show any corrupt conduct on the part of the judge?

Mr. MOON of Pennsylvania. Yes. Now, this triumvirate of legal conspirators—Belden, Davis, and Paquet—were sworn officers of that court. They were pledged to uphold its dignity and its honor. They were high priests in that temple of justice and with unhallowed hands they profaned its sacred altars, and I say that if Judge Swayne did not in sentencing them for contempt say that their conduct was an offense in the nostrils of justice he lost an opportunity of saying what he ought to have said. I say that their conduct absolutely justified it, and nothing can convince me that the good people of Pensacola, Fla., do not look with disdain upon such chicanery and shyster practice as that. We are dealing with a coordinate organic department of this Government—the judiciary—the weakest division of the three great powers; a department that has no patronage to dispense; that neither carries the purse nor wears the sword; whose sole power for its protection is the summary power to punish for contempt. In every judicial district of this land, upon the bench with the judge, sits enthroned the dignity of the United States, and whosoever touches with the finger of contempt the least one of these judges touches us; and that it is our duty, as members of the legislative department of the country, to guard and protect with jealous care the dignity and honor of the judiciary, as it is to protect ourselves from contumely and contempt. [Prolonged applause.]

Mr. GILLET of California. Mr. Speaker, I now yield 30 minutes to the gentleman from Indiana [Mr. Crumpacker].

Mr. CRUMPACKER. Mr. Speaker, the time is passed in this debate when it seems proper to go into a detailed discussion of the various articles presented by the special committee for adoption by the House in the impeachment of Judge Swayne. The various charges have been discussed in detail and at great length by members of the special committee and members of the Committee on the Judiciary, who formulated the charges and who are thoroughly familiar with the record. The views of the members of that committee, conflicting and antagonistic as they are, have been given to the House in elaborate detail. The gentleman from Pennsylvania [Mr. Moon] who just preceded me, made an exceptionally strong argument against the adoption of any of the articles of impeachment presented by the special committee. My mind has been running along in the same channel with his argument.

In conversation with Members of the House I have heard many say that the House had already committed itself to the policy of impeaching Judge Swayne and it only remained to formulate the charges. The gentleman from Pennsylvania [Mr. Palmer], who is in charge of the majority report of the committee, in his able speech said that it was within the power of the House to vote down all of the articles of impeachment and discontinue the proceeding altogether. He said the House might stultify itself and make itself a laughing stock before the country if it so desired. It occurs to me, Mr. Speaker, that each Member of this body must determine his action upon the standards of justice and policy he has in his own mind. Each one must determine his duty for himself. The House is familiar with the discussion that occurred at the time of the adoption of the resolution for impeachment before the holiday recess. There was practically but one side of the question presented to the House.

I believe every Member who spoke on that occasion had signed a report or a statement that appeared in the record declaring that the resolution for impeachment ought to be adopted. If now, on further investigation, a Member of this body who voted for the resolution originally should conclude that he made a mistake, that the charges presented against Judge Swayne are not of such a grave character as to justify this extraordinary proceeding, let me ask him whether he regards it his duty, in the face of his new-born conviction, to still vote to fix upon the name of an innocent judge the brand of infamy that will stand through all the generations to come in order that he may appear to be consistent. It occurs to me that no Member of this body, if he sincerely believes that the charges are not worthy of the high consideration that gentlemen are attempting to give to them, can conscientiously support them regardless of what his attitude may have been upon the original resolution. In my judgment, the Member who votes for any article of impeachment against his conviction stultifies his conscience and his manhood.

The gentleman from Pennsylvania [Mr. Moon] discussed in a measure the general aspects of this case. What kind of a man and a judge is Judge Swayne? He has been characterized upon this floor as "utterly corrupt," as "utterly tyrannical," as "the most lawless man in the State of Florida," a man in whose career lingers bankruptcies, scandals, and suicides. Is he such a monster as he has been charac-

terized? It is impossible. He went to the State of Florida about 20 years ago and took up his home there in good faith. In May, 1889, after having lived there about five years, he was appointed United States district judge for the district of Florida. He has continued in his office under that appointment ever since, and in 1897, after having served as judge for the district for eight years, members of the bar of that State, men who had practiced before him, men who knew all about him as a judge, and men who knew him personally, recommended him for the important and responsible position of justice of the Supreme Court of the United States to succeed the late Justice Field, who was expected shortly to retire.

In 1899 these same men, including all the members of the bar at Pensacola, lawyers and business men all over the State of Florida, recommended him for promotion to the United States circuit bench for the fifth judicial district. During the last 10 years of his official service most of his time has been spent in holding court outside of his district. He has held court in Texas, Louisiana, and Alabama, and the record shows that 50 per cent more of his time was devoted to work outside of the State of Florida than was given to work in the State of Florida. He has held court at the suggestion and by the designation of the circuit judges of that circuit all over the Southern States, and yet, Mr. Speaker, not a single criticism of Judge Swayne, either as a citizen or judge, has come from Texas, Louisiana, Alabama, or any other place where he held court outside of the northern district of Florida. Is not that significant? If he were such a monster, if he were so thoroughly corrupt and absolutely tyrannical as he has been described upon the floor of this House, would there not have been some exhibition of his viciousness, some complaint from the States of Texas, Louisiana, and Alabama, where he devoted most of his time to his court duties during the last 10 years of his official career?

During that time, Mr. Speaker, the circuit judges who sat with him, who saw the character of his work, who reviewed his decisions, and knew more about him as a judge than anyone else could know, selected him to go into those other States and administer justice. Is it possible that the circuit judges of that circuit would select and send out a judge so utterly unfit, so thoroughly corrupt, to administer the most important rights of the people into those other States? I say it is impossible to believe they would do such a thing. The record shows that this judge sat in thousands of cases involving large amounts of property and the most important questions, and yet after a most zealous and vigilant and thorough investigation of his record for a period of 15 years not a word of criticism has been made in relation to a single decision, a single judgment he rendered, excepting two inconsequential, unimportant contempt cases.

Let me ask of this House if there is a district judge in the United States who has been as long on the bench and has done as much business as Judge Swayne against whom as much could not be discovered upon a much less thorough and zealous investigation than has been made in this case? In respect to these two contempt cases that have been discussed so exhaustively upon the floor of this House, the debate here itself is convincing evidence of the fact that Judge Swayne was not and could not have been influenced by any improper motives in his decision in either of them. The merits of those cases

has been the subject of honest debate and honest difference of opinion here. The distinguished, eloquent, and dramatic gentleman from New York [Mr. Cockran] criticized Judge Swayne in relation to his conduct in the Belden and Davis case, while my friend from Maine [Mr. Littlefield], equally as honest, equally as able, and equally as eloquent, if not quite as dramatic, justified the action of the judge in that case from beginning to end, disclosing an honest difference of opinion between two eminent, able lawyers and statesmen in relation to the merits of the case. One claims that the decision of the judge was wrong, and the other claims that if he had not decided as he did he would have been wrong.

Why, Mr. Speaker, I believe if it were submitted to this House fully one-half of the membership—aye, I believe that if not involved in this question of impeachment, nine-tenths of the House would justify the entire conduct of Judge Swayne in the disposition of the Belden and Davis contempt case. We are not here to impeach Judge Swayne because he may have made a mistake, if it were admitted that he did make one. This proceeding, Mr. Speaker, is not criminal; it is not penal. It is not instituted for the purpose of punishing a judge for any violation of law or any mistake he may have made in administering the law. It is a political proceeding brought for the sole purpose of determining whether this United States judge is longer fitted to occupy the responsible and honorable position he now fills—that and nothing more. I believe in the maintenance of a high standard for the judiciary of this country, but an ideal standard is not to be expected. We can have practical standards only. Judges make mistakes in relation to the law every day in the year, as the reports of the Supreme Court of the United States disclose. Cases are reversed almost every day that that court is in session and the inference is that the trial court made a mistake in every case that is reversed.

Mr. FOWLER. And in decisions of 5 to 4.

Mr. CRUMPACKER. And even, Mr. Speaker, decisions in the most important cases of that high tribunal are rendered by a bare majority of 1. Is the dissenting minority impeachable for being on the wrong side of the law? It does not follow that because a decision may have been reversed the judge who rendered it is guilty of misconduct.

This debate illustrates that honest minds may differ respecting the two decisions of Judge Swayne involved in this proceeding. One honest judge might have discharged the defendants in both cases, and another equally honest judge might have convicted them in both cases, as Judge Swayne did.

The question is, Does this record show that Judge Swayne was corrupt, that his official conduct was prompted by improper and unworthy motives? The gentleman from New York [Mr. Cockran] put the question to the House in this way: He said, "Here are certain transactions shown by the record that Members have said were in bad taste and possibly reprehensible in some degree. Now," he says, "the question is for the House to determine. If it votes against impeachment, it not only condones but approves conduct that may be reprehensible." According to his logic the only way one can disapprove the conduct of a civil officer is to vote to impeach him!

The Constitution of the United States provides that civil officers may be impeached for high crimes and misdemeanors. There may be irregularities in the conduct of a public officer that do not approach



the dignity of high crimes and misdemeanors, and consequently would not authorize impeachment. Impeachment is an extraordinary proceeding, it has been resorted to only a few times in the history of this country, and the fact that it is so rarely invoked, Mr. Speaker, is convincing evidence that it is only invoked in cases where the misconduct is of such a grave nature as to require a resort to extraordinary proceedings.

There is no judge in America or anywhere else whose conduct is absolutely upright and correct in every particular and upon all occasions. The question is, Does Judge Swayne measure up to the ordinary standard of district judges throughout the country? That is the question for the House to determine. The charges, Mr. Speaker, are of a flimsy nature. The record presents to the House for consideration a mass of chaff, and when it is sifted, when the chaff is separated from the wheat, there is practically nothing left. The question of residence has been thoroughly discussed.

In my judgment there is no court in christendom that would not decide upon this record that Judge Swayne has made not only a technical but a substantial compliance with the residence requirement of the statute from the time he first went to Pensacola, Fla., to make his home, until the present time. There is no question about it in my mind. Of course, he was absent from the State of Florida a good portion of each year, but it must be borne in mind that during the court season of the year 50 per cent more of his time was occupied in holding court outside of that State than in it. He was necessarily absent then. The evidence showed that he was absent from his own district only during the summer vacation, with one exception or two, when during the holiday season he went to his ancestral home in Delaware, except when he was ordered to be away in other parts of the country attending to his official duties by direction of his superior officers.

Mr. WM. ALDEN SMITH. Does not the record show that he actually attended court and held court there more frequently than judges of many other districts?

Mr. CRUMPACKER. I do not know. The work of judges in other districts is not gone into in the record.

Mr. LITTLEFIELD. It shows an annual average of holding court of 179 days in and out his district.

Mr. CRUMPACKER. That is assuming that he held court six days in the week?

Mr. LITTLEFIELD. Oh, no; the actual number of days on which he held court.

Mr. CRUMPACKER. And that does not include days during terms when there were no cases ready for trial, when the judge might be engaged in looking up law questions or in the preparing of opinions or in writing instructions, and some courts only hold sessions five days in the week regularly. That is the common custom out in the State of Indiana, particularly among State courts.

Then there was the time occupied in going to and returning from the place of holding court, and when all the facts are fairly considered it appears quite satisfactorily that Judge Swayne was engaged in his official work in the northern district of Florida and elsewhere under the direction of the circuit judges all of the time for the last 10 years excepting during his proper summer vacation.

Mr. LITTLEFIELD. On an average of three months in a year.

Mr. CRUMPACKER. On an average of three months a year. Now, some reference has been made to the state of feeling against Judge Swayne in Florida. What is the reason for it? He was appointed judge in May, 1889, and shortly after his appointment a series of election prosecutions occurred. The grand jury impaneled during that fall returned a large number of indictments for election frauds. That action created a great deal of excitement throughout the State of Florida. The feeling was intense, and opposition to the confirmation of Judge Swayne's appointment was made before the Committee on the Judiciary in the United States Senate at the following session of Congress.

The question of his confirmation was held up by that committee for four months. A thorough investigation was had. Judge Swayne was charged with intense partisanship, with partiality, with improper conduct in impaneling the grand jury; and after a thorough investigation his conduct was fully vindicated, and he was confirmed. Questions growing out of the election cases were the subject of several very acrimonious personal debates on the floor of the Senate, which illustrated the intensity of the feeling existing on account of the election cases.

In the meantime deputy marshals who attempted to serve the warrants and writs were assassinated, witnesses were shot and intimidated and kept away from the court, and finally, in June or July, 1891, the courthouse at Jacksonville, containing the indictments and the records of the cases, was burned by an incendiary, and by that means the prosecutions were disposed of forever.

The feeling was intense and persistent, and in 1893, after Mr. Cleveland became President, supported by a Democratic Congress, a new district was created in the State of Florida, taking away from Judge Swayne's court practically all of the business it had. There is no man who will take the pains to go back and study the history of this judgeship, involving the appointment and confirmation of Judge Swayne, the assassination of deputy marshals, the murder of witnesses, and the destruction of the courthouse at Jacksonville, who will not conclude that the feeling against the judge was most bitter and vindictive. He had lived there only about five years when he was originally appointed. He was characterized as a "carpetbagger." I am not criticising anybody, but simply relating the history of this judgeship, with the view of finding an explanation of the feeling that is said to exist against Judge Swayne in Florida at this time.

After the new district was created and in the course of time the feeling growing out of the election cases largely subsided, and the judge was getting on fairly well with his court until the O'Neal contempt case occurred. That man, who was justly punished for a gross contempt of court, swore vengeance against Judge Swayne, and with his wealth and influence he had but little difficulty in fanning the old slumbering prejudice against the "carpetbag judge" into an active flame, and the result was the adoption of the resolutions on the part of the Legislature of Florida during the winter of 1903 demanding Swayne's impeachment.

I believe, Mr. Speaker, that if it had not been for those election prosecutions, those unfortunate indictments against men charged with frauds against the ballot in 1889, there would have been no

thought of instituting impeachment proceedings against Judge Swayne. This entire proceeding, this persecution, is the result of an attempt of officers of the law to punish election frauds in Florida. This is the only way to account for the feeling now existing against Judge Swayne in that State. His conduct as judge does not deserve it.

But I doubt if it exists in the degree that has been depicted by the gentleman from Florida and other Members on the floor of this House. No man has spoken a single word against the private character and standing of this judge. No man has questioned his integrity except in connection with the per diem and the private-car transactions. The private-car transaction occurred 10 or 11 years ago, under a receiver, my recollection is, who was not appointed by Judge Swayne at all. I understand that the original receiver appointed by Judge Swayne was a Mr. Mason, and Judge Pardee came down and they consulted together, and Mr. Durkee was made receiver at the suggestion of Judge Pardee, succeeding Mr. Mason, a man of eminent standing and integrity. During the course of the receivership the private car was sent to bring Judge Swayne from Guyencourt, Del., to Pensacola. The record shows that without any suggestion on the part of Judge Swayne the receiver, upon his own motion, sent the private car to Guyencourt to bring him down to hold his court in the fall of 1893.

Possibly that was a transaction that may be entitled to some degree of reproach, that may be in some degree reprehensible, but I submit, Mr. Speaker, it was a transaction which, having occurred 11 or 12 years ago, does not now reach the importance of grave irregularity or a high misdemeanor such as to justify the House of Representatives in impeaching the judge. He did not pass upon the accounts of the receiver. The new district was created in 1894, and the chief seat of justice in the district of Florida prior to that time was at Jacksonville, possibly at St. Augustine. The receivership was being administered at Jacksonville, and in 1894, about a year after, or within a year from the time of the appointment of that receiver, the new law went into effect, Judge Swayne was sent over to Pensacola and Tallahassee, and his successor administered and closed up the receivership and passed upon the accounts of the receiver.

I do not know that that would make any difference in the principle involved in the question, but I do submit that it is too inconsequential to justify the grave and extraordinary proceeding of impeachment.

Then, during that same summer, Judge Swayne desired to take a trip to California for his health, and the receiver said to him, "Take the private car; it is not in use, we do not need it, it will not cost anything to operate it; there is a standing custom among all the railroads throughout the country to transport private cars without charge, and we will have to carry just as many private cars over our lines if you do not use this one as if you do," and Judge Swayne accepted his hospitality. Perhaps he ought not to have done it. I do not justify the conduct of Judge Swayne in using the private car, but at the same time I take the position that it is not a high misdemeanor. It may be a misfeasance, it may be one of those common irregularities that many well-disposed men, upright, just, and able judges, would commit. It does not demonstrate such a degree of corruption and unfitness as would justify the Senate of the United

States, as an impeaching court, in convicting Judge Swayne and removing him from office.

Mr. PALMER. Will the gentleman allow an interrogation?

Mr. CRUMPACKER. I will.

Mr. PALMER. What do you think about the proposition that he had a right to use that car because the railroad was in the hands of a receiver?

Mr. CRUMPACKER. I think about that proposition as I do about a good many other things that are in this record; it is one of the things that incidentally came about, and Judge Swayne afterwards said he did not take any such position at all. [Applause.]

Mr. PALMER. I beg your pardon.

Mr. CRUMPACKER. Judge Swayne said he did not take the position and did not want to be understood as claiming that he had a right to use property that was within his custody through a receivership appointed by him, and the gentleman, I think, will remember that——

Mr. PALMER. I think I remember this: I think I remember distinctly what occurred and I think I remember distinctly what is in the record. When Judge Swayne made his written statement, 23 pages of typewriting, occupying 13 pages of this record, he distinctly put his use of the private car on the proposition that he had a right to use it. That was a proposition so astounding that I cross-examined him afterwards on that subject.

Mr. CRUMPACKER. Of course now——

Mr. PALMER. Wait a minute. Then he distinctly said he had a right to use it and understood that he had the right to use it, and he answered that twice or three times. If he did not mean it, of course——

Mr. CRUMPACKER. When he said he had a right to use it, he doubtless thought he was doing no wrong, when the receiver suggested that he take it and use it.

Mr. PALMER. I give Judge Swayne the credit for being a man having common sense and a man able to understand a plain question.

Mr. CRUMPACKER. I do not believe that when Judge Swayne accepted the hospitality of the receiver, or accepted the suggestion of the receiver to ride in the private car, that he thought for a moment he was doing a wrong thing. Whatever may be thought about his conduct now, it did not occur to him that it was wrong. If it was not wrong, he thought it was a right and proper thing to do, and that is the interpretation of Judge Swayne's testimony in regard to his alleged right to use property that was in the custody of a receiver appointed by him.

Now, these contempt cases, as I said just a moment ago, have been debated sufficiently here upon the floor to disclose the fact that there is room for honest difference of opinion in relation to the judgment of the court in each of them. Honest, well-meaning, conscientious men occupy both sides of the question. Therefore there is absolutely no justification in attempting to impeach Judge Swayne because he did not interpret the law the same as some of us might have interpreted it under the same circumstances.

Mr. THAYER. Mr. Speaker, will the gentleman allow me a suggestion?

The SPEAKER pro tempore. Does the gentleman yield?

Mr. CRUMPACKER. Yes.

Mr. THAYER. I would like to ask what the gentleman thinks were the acts of Belden and Davis for which they were committed for contempt?

Mr. CRUMPACKER. The acts of Belden and Davis were the acts of men who entered into a conspiracy——

Mr. THAYER. The gentleman, I take it——

Mr. CRUMPACKER. Let me answer the question. They were the acts of men who entered into a contemptible conspiracy, in the night-time, to bring a suit, not in good faith at all, but for the purpose of bringing the court into contempt and ridicule and compelling the judge to do a thing that under the law he was not required to do and that he ought not to have done.

They were the acts of common shysters, and if Judge Swayne had had the power to suspend these men from practice during the balance of their lives he would not have overstepped the bounds of propriety if he had done so. Their act was a deliberate act; it was not a thing done in the heat of passion, through excess of zeal, but it was a deliberate conspiracy entered into by these lawyers of large experience to bring that court into contempt and ridicule, and compel it to do a thing that it could not be compelled to do otherwise.

Mr. THAYER. Does the gentleman claim that nonsuit in the suit in his court was one of the acts for which they should be punished?

Mr. CRUMPACKER. Does the gentleman mean the asking for the dismissal of the case?

Mr. THAYER. The fact that they did become nonsuit on the Monday following Saturday?

Mr. CRUMPACKER. That was after the crime had been committed, and they had to be there to answer.

Mr. THAYER. They had a right to become nonsuit.

Mr. CRUMPACKER. They had no intention of dismissing the suit at the time they entered into this conspiracy on Saturday. In their answer, in their attempt to purge themselves, they made no reference to anything of that kind. They never claimed it at all.

Mr. THAYER. I do not know as I quite apprehend the gentleman's position. I understand the gentleman from Indiana to say that it is the conspiracy for which they were committed for contempt. Does the gentleman mean that a part of that conspiracy was the discontinuance of the suit, which they had a perfect right to do any minute before judgment?

Mr. CRUMPACKER. I do not claim that; they had no idea of discontinuing the suit before Judge Swayne when they brought that suit in the State court on Saturday night. It was to compel Judge Swayne to recuse himself and retire from the bench and give them a continuance until Thursday. They had no idea when they brought the suit of discontinuing it on the next Monday.

Mr. THAYER. From what part of the record here does the gentleman say that on Saturday night they did not conclude that on the following Monday they would become nonsuit?

Mr. CRUMPACKER. Because when they went into court to defend their conduct they never claimed any such thing.

Mr. THAYER. They were not obliged to.



Mr. CRUMPACKER. If it had been the fact, it would have been a part of their justification. It is all a part of one transaction, Now, if the gentleman will go to the record and read the record——

Mr. THAYER. I have read it as thoroughly as the gentleman from Indiana.

Mr. CRUMPACKER. I think if his mind is fair, as it ought to be—and I have no reason to believe otherwise—he will reach the conclusion that Judge Swayne was justified in doing everything he did in that case except adding imprisonment to the fine; and it will be found in the decisions of the court of appeals that other judges have made the same mistake, and yet nobody ever proposed to impeach them for the mistake.

Mr. THAYER. Then the gentleman comes to the conclusion that they were committed for contempt for bringing the suit against the judge, and that alone?

Mr. CRUMPACKER. No, sir. I claim they were committed for contempt for bringing a bad-faith suit in the State court for the purpose of bringing the Federal court into contempt and ridicule and coercing the judge to do a thing that they could not legally procure him to do and had no right to have him do.

Mr. THAYER. Now you characterize his act.

Mr. CRUMPACKER. I decline to yield further. I have answered the gentleman as fully as I can. The standard of the judiciary in this country is as high as in any other country in Christian civilization.

It is not perfect, but I want to say that if the judges of the Federal court are to be impeached because they do not construe the statutes of the United States in the same manner that we would the necessary independence of the judiciary will have departed from our civilization. In English history, notwithstanding the Magna Charta, the petition of rights, and the acts of settlement, there was no liberty of the person until the independence of the judiciary became a fixed, a solemn, and a permanent fact. Courts in this country must preserve and protect their own dignity. They must have a sufficient degree of latitude to do that or they will lose the respect of the citizens everywhere.

I repeat, Mr. Speaker, that Judge Swayne has not been guilty of more mistakes or irregularities, considering the long period of service that he has given to the country, considering the large amount of work he has done, than could be discovered against the ordinary district judge, and I shall vote against every single article of impeachment proposed by the committee. [Applause.]

[Appendix to Congressional Record, volume 39, part 1, page 96.]

Mr. LAMAR of Florida:

Mr. SPEAKER: Nobody will go further on the floor of this House to admit anything that tends fairly against this impeachment proceeding than I. I will concede freely the force and relevancy of any evidence that fairly goes to show any malice or other motive behind this impeachment proceeding. Mr. Speaker, it would not break the force of the charges against Judge Swayne, if they are true, could it be shown that I had personal malice against Judge Swayne. It would not prove that this House, Republican as well as Democrat, should not impeach him, if the charges against him be true, could it be shown that the State of Florida had an old, ancient grudge against

Judge Swayne which it was whetting through this proceeding. It would only show that my position before this House was not as proper as I claim it to be. It would only show that the State of Florida, instead of standing here with clean hands, was standing here with hands not clean, so far as her motives were concerned. She might have a clean case with an impure spirit behind it. But I repel, Mr. Speaker, the charge that either I have any personal malice against Judge Swayne or that the State of Florida has any malice against him politically. It is always the last refuge of the apologists and defenders of a man charged with crime, even where they are bona fide in their belief in his innocence, when they have a bad case, to be driven, as they have been driven in this case, to found their last defense upon the alleged bad motives of those who prefer the accusation. And in this case those apologists and those defenders found their last hope against impeachment on the ground that Judge Swayne is a Republican. Shall the Republicans impeach a Republican judge? I submit that to be the issue the letter of Judge Pardee raises here. It is not the true issue. This House, in my opinion, will not be completely controlled by it; but it is the attempted issue that has been injected into this proceeding.

In a speech I made here last spring I distinctly requested this body, without regard to party politics, because I knew that sooner or later it would be injected into this case, to read the evidence in the case carefully, that each Member might determine it upon its merits. That is my request in the Record. I knew that the State of Florida had a good case against Charles Swayne, and I know it can never be broken down in this House unless party spirit does it. Just what I expected has come to pass. A high Federal judge in this country, to bolster up the waning case of a friend, and of a co-Republican, has written a letter, in effect, to this House of Representatives, through the honorable gentleman from Ohio [Mr. Grosvenor], denouncing the State of Florida, and imputing to her the unworthy motive that she is prosecuting Judge Swayne because of some old political election cases 20 years ago. I deny it. I repel the charge. And I am surprised at Judge Pardee. He slanders the people of Florida.

I will say that in those election cases in Florida the feeling against Judge Swayne did not arise out of the fact that he was maintaining the supremacy of the Federal laws in my State. It did not arise out of the fact that he was a Republican. Now, why is there any feeling against Judge Swayne? There is none against Judge Locke in the State of Florida, and he has been a Federal judge there 25 years, and he is a Republican. All heard what my colleague the gentleman from Florida [Mr. Davis] said here the other day, that everybody in that State respected Judge Locke. I made that statement a year ago, when I presented the resolution from my State against Judge Swayne.

If 20 years ago there existed any political feeling against Judge Swayne, his bad acts caused it. It lay in the fact that, without notice, without warning, ex parte, he removed at that time a well-known Democrat of that State, appointed by Judge Settle, his predecessor, and who had continued in the office of jury commissioner a long period—I believe 10 years—and in his stead Judge Swayne appointed an independent Democrat to be such jury commissioner. He was not a well-known Democrat, as the law required.

Every sensible man in Florida believed that the jury commissioners packed the jury box in order to secure wholesale indictments against Democrats in Florida. The grand jury they drew was composed of 18 or 20 Republicans and 2 or 3 Democrats. Then there came to light a letter—I have a photographic copy of it in my hand—from the marshal in Judge Swayne's court to a deputy of his to see a Mr. Beilby, a Republican in a county in Judge Swayne's judicial district, and get from him the names of "50 or 60 true and tried Republicans" to go into the jury box at the then coming term of the United States court. When that letter was discovered and published in my State, it was conclusive, moral proof, with the other evidence recited above, to our people that the grand jury had been packed, and packed through Judge Swayne's connivance and instrumentality. Out of that grew that unfortunate, deplorable situation that has been mentioned on the floor of this House. I admit that there was some violence in my State at that time. Nobody deploras it more than I do, and the conservative people of my State regretted it at the time it occurred.

Now, I say this much: That it has no relevancy here in this debate. I have not introduced it. I have not said a word about it. I never would have said a word about it if it had not been charged on the floor of this House that this accusation of impeachment was trumped up out of political consideration and that it is a political grudge that the people of Florida want to pay off on Charles Swayne. I repudiate it. There is not a syllable of truth in it. Now, what will the membership of this House say, if I can prove Charles Swayne to be a corrupt man? What will the membership of this House say if I can prove that Charles Swayne has been judicially, in the State of Florida, adjudicated to be a corrupt man? I will quote a man of his own party. I will quote a Federal judge in Florida. I will quote Judge Locke against him. Mr. Wurts testified before the subcommittee, and his testimony has never been challenged, that Judge Locke stated to him that Judge Swayne's actions in allowing masters' fees was nothing less than legalized robbery. I here insert a portion of the testimony given by Hon. John Wurts (formerly a lawyer in Jacksonville, Fla., and at this time a professor of law at Yale University) before the subcommittee in Washington, D. C., viz:

By Mr. PALMER:

Q. In this talk down there at that time where Judge Swayne's reputation was under discussion, were there any cases mentioned other than those you have stated?—A. To me?

Q. Yes.—A. Yes, sir.

Q. Just go on and tell now——A. I was once myself humiliated in open court by a reference to Judge Swayne. I had foreclosed a mortgage after Judge Swayne left. I had brought the foreclosure of the mortgage on an electric-light plant to a fortunate termination after determined resistance on the part of the defendants, and the mortgage making provision for counsel fees, I made an application to the court for an allowance. The matter was referred to a special master, who reported a fee for me of \$1,000. I brought the matter up before the court for confirmation.

By Mr. HIGGINS:

Q. What court was this?—A. The United States court for the southern district of Florida, in Jacksonville. I brought the matter up for confirmation before Judge Locke, and for an order that I should be paid \$1,000. Judge Locke said, "I will make no such allowance. It is out of all reason to make an allowance for \$1,000 in this case. It would be dishonest. I know that allowances of this character have heretofore been made, but I consider it legalized robbery, and you can not have any allowance of that kind. I will allow you \$500, and

I think that is liberal." The Judge got off the bench, left the bench, and he was much put out, and this reflected on my integrity, and I followed the Judge into his private room for the purpose of convincing him that the services rendered in the case were other than he must think they were. He would not allow me to make any explanation. He said, "Wurts, you can not afford to make any application of that kind, and I can not afford to entertain it." He said, "You know the scandal that there has been here; you know the scandal, and this thing has got to cease. I will not make any such allowance. Nothing of this kind shall be said about my court." And at that time I felt humiliated beyond expression that I should have been drawn, even indirectly, in that way into having an imputation on my integrity in open court.

The defenders of Judge Swayne admit, in their minority report, that if Judge Swayne had yielded to any attempt to influence his act, by riding upon the car of a railroad company, such an act would be a proper subject for impeachment. I say that Mr. Wurts's uncontradicted testimony shows that railroad company did attempt and did seek to influence him, and that Judge Swayne yielded to the attempt. It shows that the Florida Central & Peninsular Railroad Co.—now a part of the Seaboard Air Line—hailed Judge Swayne from Jacksonville to the Pacific coast and back. It might have been the car of the Jacksonville, Tampa & Key West, but it was the Florida Central & Peninsular Railroad Co. that sent the car and its traveling passenger agent, Mr. Coleman, along with Judge Swayne as cicerone. Mr. Wurts so says in his testimony, and says that Judge Swayne admitted that fact to him. And Mr. Wurts's testimony further goes on to the effect that important litigation was pending in Judge Swayne's court in the city of Jacksonville, involving terminal property of that road of considerable value. I quote again from the testimony of Mr. Wurts before the subcommittee, viz:

By Mr. PALMER:

Q. You have not mentioned the reason why you were not appointed. Have you any objection to answering that?—A. Well, now, unless it is insisted upon, I would prefer not to.

Q. Well, I do not care to insist. What railroad was this that went into the hands of a receiver there which owned this private car that the judge was said to ride up and down in?—A. The Jacksonville, Tampa and Key West.

Q. With what railroad did that connect, going north?—A. The Plant System.

Q. At what place?—A. At Jacksonville. Well, there were two connections to the north. The Jacksonville, Tampa and Key West System ran south from Jacksonville, and there were two northern systems running into Jacksonville at that time, one the Plant System, which was the Atlantic Coast Line, and the other the Florida Central and Peninsular, which is now the Seaboard Air Line.

Q. If a car was sent north from Jacksonville to Delaware would it run over any part of the line that was in the hands of the receiver?—A. No, sir; it would not.

Q. It would go over other lines?—A. Yes, sir.

Q. Do you know who paid the expenses of transporting that car from Jacksonville to Delaware and return?—A. I have no knowledge on that subject.

Q. What road was it that furnished the private car that the judge was said to have used to go west to the Pacific slope?—A. It was furnished by the Florida Central and Peninsular. It was not, however, the car of that road. It was the car of the Jacksonville, Tampa and Key West road, but was furnished by the Florida Central and Peninsular. With relation to that allow me to say that a large part of the scandalous talk about Judge Swayne and the imputations on his integrity arose out of that trip on a private car, because at the time that this car was furnished to him there was pending a suit against the Florida Central and Peninsular involving a very large amount in value, involving the title of a large tract, part of the terminal land in the city of Jacksonville of the Florida Central and Peninsular. This suit was pending at the time. It was a suit brought by a man named Needles to recover possession of this land, and it was pending in Judge Swayne's court.

Q. Brought against the company?—A. Brought against the company.

And I quote further from Mr. Wurts's testimony to the same effect, viz:

By Mr. HIGGINS:

Q. You say that the car belonged to the Jacksonville, Tampa and Key West road?—A. That is what I understood.

Q. Now, then, could it be furnished by another individual, namely, the Florida Central and Peninsula?—A. Cars can be borrowed by one road from another.

Q. No; but this car was in the hands of the receiver of Jacksonville, Tampa and Key West. How do you know that it was borrowed? Was the Florida Central Railway Company in the hands of a receiver, too?—A. No, sir.

Q. How do you know they borrowed this car?—A. I only know that from hearsay.

Q. Oh!—A. I know that they did not have a car. I know that Judge Swayne told me that the car was furnished him by the Florida Central and Peninsular. Not only that, but he told me that he was accompanied on that trip by Coleman—I think his name is Walter Coleman—whom I know to have been the traveling passenger agent of the Florida Central and Peninsular, and that he accompanied them as cicerone.

Q. Do you say that Judge Swayne told you that the Florida Central Co. borrowed this car?—A. No, sir; he told me that they furnished the car.

Q. They furnished the car?—A. Yes, sir.

Q. Where was that said?—A. My recollection is that it was said to me. To the best of my recollection it was said in John King's office.

Q. In whose presence; when?—A. Within a few days after Judge Swayne's return from the trip.

Q. Can you say at this distance of time in whose presence it was said?—A. I can not. I can only state most positively that it was said to me a short time after, and that Judge Swayne said he had been unable to accomplish his itinerary; that they had been obliged to return before they completed their trip on account of some family disaster.

Q. Yes. That is another matter. Do you know who provisioned the car?—A. I only know what Judge Swayne told me.

Q. What is that?—A. That they were without expense on that trip except for provisioning the car.

Q. Did you know whose servants were on the car?—A. I know nothing—I know of my own knowledge nothing beyond what—

Q. How could the Florida Central Co. have furnished the car if the car belonged to the Jacksonville road, and Judge Swayne provisioned it, if the servants of the car were the servants of the Jacksonville company?—A. If the Florida Central and Peninsular paid the mileage of the car and the track—

Q. Do you know that any mileage was paid?—A. From my knowledge as a railroad man I know that cars can not travel without expense.

Q. That is another matter. Do you know that as a courtesy of the railroad people such cars are pulled all over the United States without money and without price?—A. No, sir; I know nothing of that kind.

Q. Your experience is different from mine, then. Maj. Durkee would know all about that?—A. Yes, sir; certainly he would.

Q. Did you ever hear him say anything about that?—A. No, sir; he is a man who never opens his mouth about such things.

Q. Were you counsel in this litigation against the Florida Central Co.?—A. No, sir.

Q. You say that there was an important suit pending?—A. Yes, sir.

Q. Was that case decided?—A. I believe so.

Q. You believe so; don't you know so?—A. I have the knowledge, the common knowledge, that it was.

Q. Yes. Whom was it decided by?—A. It was decided in the Federal court. Whether the decision was rendered by Judge Swayne or not I do not know.

Q. Do you not know that it was rendered by Judge Swayne?—A. That it was not?

Q. That it was.—A. That it was?

Q. Yes.—A. No, sir; I do not know that.

Q. Do you not know that it was rendered against this company?—A. I know that as a matter of common report—that it was decided against?



Now, Mr. Speaker, the question is this: Everybody in this House is agreed that if Judge Swayne did a corrupt act he should be impeached. The very men who defend him have censured him in their report for the use of that car on the trip to the Pacific slope, and for using for his and his family's benefit the private car of a receiver of a railroad appointed by him. Mr. Wurts's testimony is uncontradicted in the record. This car was sent by the F. C. & P. Railroad, and Judge Swayne admitted this fact to Mr. Wurts.

Mr. GROSVENOR. Will the gentleman allow me a question?

Mr. LAMAR of Florida. I dislike very much to have my time taken up by questions.

Mr. GROSVENOR. Is this Mr. Wurts the same gentleman who testified as to certain statements made by Attorney General Miller?

Mr. LAMAR of Florida. Yes.

Mr. GROSVENOR. And who afterwards came in and took it back?

Mr. LAMAR of Florida. He took it back like you and I would if we had made a mistake.

Mr. GROSVENOR. Is he the same Wurts who testified, on page 364 of the record, that this private car had been used by Judge Swayne to take him from Jacksonville to his northern home, about twenty or twenty-two hours' trip, and that it was customary to take him in that way?

Mr. LAMAR of Florida. To save time, I will say that he is the same Wurtz who has testified throughout the case.

Mr. GROSVENOR. Yes.

Mr. LAMAR of Florida. Now, Mr. Speaker, Mr. Wurts's character can not be impeached wherever he is known. He stood high in the State of Florida; he stands high at the university at Yale, where he is a professor of law, and he has testified in this case that a man of his own party faith was corrupt; that he created scandals in the State of Florida, and the Federal judge, his successor, put the seal of condemnation on his former acts, on the acts of his predecessor, and stamped him from the bench, in private conversation, as corrupt, and that his acts had been scandalous and legalized robbery.

I was astounded at the speech of the gentleman from New Jersey [Mr. Parker]. I did not think that he would make it. In attempting to rebut the force and effect of his own condemnation of Judge Swayne he says to this House, almost in terms, "You can not impeach Judge Swayne, because you accept some things of equivalent value—favours from railroads."

Why, that statement made in this House is astounding. It was astounding to me, and when this testimony is printed, if it is printed in the public journals of the country, that statement of the gentleman from New Jersey [Mr. Parker] should be looked upon as one of the most astounding statements that has ever been made in this House. What does it mean? He practically says, Let this House dare to impeach Judge Swayne when they are tarred with the same stick. He says that others have used favours of value given by railroads, tendered as friendships. Now, I would not like to seem super-virtuous. I can understand how a Member of this House could accept a free pass from a railroad and ride upon it, and that, too, without influencing his action upon any railroad matter pending in this body. I can say this much, since I do not now and never have accepted or used free railroad passes or any favours from railroads.

I regret, Mr. Speaker, that a reputable and distinguished Member of this House should so far forget the proprieties as to urge upon this House that they do not dare to impeach Judge Swayne upon that question of railroad favor because the Members of this House are not "without guilt" themselves. This House is bound to admit that that was a remarkable and astounding statement from an American public man, sitting in judgment upon Judge Swayne in this great proceeding.

Now, in order to defend Judge Swayne it is said that Davis can not be believed, that O'Neal is an assassin, that my motives are malicious, and that we are all Democrats. But will you believe a Republican? If so, turn to this record and take the evidence of J. N. Coombs, a man from Maine, a banker, a large mill man in my State, and see what he says. He states that he had litigation before Judge Swayne's court, in which he was sued for \$1,800 damages, and that he did not owe a cent of it; that it was a trumped-up suit; that Hon. John Eagan, his attorney, then the United States district attorney in Judge Swayne's court, and a Republican, advised him to compromise that case for whatever he could; that with Swayne upon the bench, a Republican judge; with Coombs, who was a member of the Republican national executive committee, as defendant, with John Eagan, a Republican, as defendant's attorney, and Tunison, a Republican, of the city of Pensacola, as plaintiff's attorney—that with Swayne on the bench and Tunison as the opposite attorney, he, Coombs, would pay every cent of it whether he owed it or not. And on that advice he did compromise that case, and stated that he did not owe a dollar of it.

I quote the testimony of Mr. Coombs before the subcommittee, viz:

J. N. Coombs. (Examined at railroad station, Tallahassee, February 19.)

Direct examination by Judge LIDDON:

Q. Your name is J. N. Coombs?—A. Yes.

Q. Do you know Judge Charles Swayne?—A. I have met him.

Q. Have you had any litigation in his court?—A. Yes.

Q. From the litigation in his court, do you know anything which tends to show that he is oppressive or corrupt as a judge?—A. No; I don't know as I do.

Q. You had litigation in his court; what became of the case?—A. It was dismissed.

Q. Why?—A. Because I did not care to try it before Judge Swayne.

Q. Why did you not care to try it before Judge Swayne?—A. Because Tunison was on the other side. We were advised not to try it.

Q. You were advised to dismiss the case if Tunison was on the other side?—A. Yes.

Q. Why? Was there any reason why Tunison, being on the other side, was injurious?—A. No; only the reason usually given—that we would not get a fair trial with Tunison on the other side.

Q. So you dismissed the case?—A. Yes.

Q. That was the general opinion?—A. That is all the general conversation I have heard.

Q. What are your politics?—A. I am a Republican.

Q. Where do you live?—A. In Apalachicola, Fla.

By Judge CLAYTON:

Q. You are a banker and lumber merchant?—A. Yes.

Q. As large a dealer as any in the city?—A. I don't know about that.

Q. You are president of the First National Bank at Apalachicola?—A. Yes.

Cross-examination by Mr. TUNISON:

Q. Mr. Coombs, this case you refer to, is it a case of the *Advokat-Schiander*—the master of that vessel?—A. I don't know.

Q. Was it a case where one Aas, master of the *Advokat-Schiander*, against J. N. Coombs & Co.?—A. Yes.

Q. Was it an action in admiralty or common law?—A. You ought to know, as you brought the suit.

Q. I brought the suit for who?—A. The bark captain.

Q. Was it settled by you?—A. Yes.

Q. By paying how much money?—A. \$400.

Mr. TUNISON. I ask leave of the committee to file the record of this case, including the libel and other proceedings.

Cross-examination by Judge LIDDON:

Q. Did you owe that money?—A. No, sir; not a dollars of it.

Q. Would you have contested it if you had thought you could have gotten a fair trial?—A. Yes; I did contest it until I saw it was useless.

Q. You derived that impression from what?—A. From other litigants and counsel.

By Mr. GILLETTE:

Q. What other litigants did you talk to?—A. Quite a number.

Q. Can you remember the names of any you talked to before this particular case?—A. I think Mr. Northup.

Q. You heard him say so?—A. Yes.

Q. Anybody else?—A. John Eagan was one.

Q. John Eagan was district attorney?—A. Yes.

Q. He was not a litigant?—A. No; he was our adviser.

Q. Then it was John Eagan advised you to settle?—A. Yes.

Q. Upon his advice you acted?—A. Yes.

Q. And you say Northup also advised you of that fact?—A. Yes.

Recross-examination by Mr. TUNISON:

Q. You were advised by John Eagan?—A. Yes.

Q. How long ago?—A. I don't know; about a year and a half ago.

Q. Who were your attorneys in that case?—A. Eagan and Raney.

Q. Who else?—A. Nobody.

Q. Wasn't Sheppard?—A. No.

Q. Wasn't W. A. Blount?—A. No, sir; it is just barely possible that Blount was talked about one time.

Q. Now, wasn't it long after the death of John Eagan and after Raney commenced to represent you that the settlement was effected?—A. No.

Q. You state that on oath?—A. Not positively; I think so.

Q. You swear it?—A. Not without looking at the date.

Q. How much was the master and owner of the *Advokat-Schiander* claiming against you?—A. I think you made up a claim of about \$1,600.

Q. He was suing you for that amount?—A. Yes; something like that.

By Judge PALMER:

Q. What was it settled for?—A. \$400.

Q. Was that claim settled about the month of December last?—A. Oh, no.

Q. About when?—A. Oh, a year ago, at least.

Q. Was it before or after Mr. Sheppard was appointed district attorney?—A. Before.

Mr. TUNISON. Now, I ask leave of court to file the oath of office of Sheppard, district attorney.

Judge CLAYTON. You can do that.

A. Mr. Tunison spoke about dates—that is his business; you wired over there about the case; the captain came over there—came into port (stenographer could not understand what port witness said—asked him to repeat, which he did not do); left there the day before war was declared (Spanish-American War); he wanted to know if he could come in or if he would have to go by quarantine station; we wired him he could go by Tortugas; we thought quarantine had been taken off; he went by Tortugas, but the War Department had taken possession of Tortugas—they would not let him come in there, ordered him to go to Pensacola. Freight rates went up 140 shillings. He refused to complete his voyage and fulfill his charter.

By Judge LIDDON:

Q. You thought you had a good defense?—A. Yes.

Q. And you would not have settled only you thought you could not get justice with Tunison on the other side?—A. Yes.

By Mr. TUNISON :

Q. Do you know if in admiralty cases the case is tried de novo?—A. No, sir; I do not.

Conclusion of the testimony at Tallahassee.

Now, if you will not believe me, if you will not believe Davis, if you will not believe Belden, if you will not believe any Democrat, then I ask you Republicans, will you believe John Wurts or Judge Locke or J. N. Coombs, all Republicans? I say that when a sovereign State comes here twice and impeaches the reputation of a man living in it and with a record against him disclosing such an overwhelming series—a long series—of continued violations of law and violation of duty, then the conclusion is irresistible that the State of Florida spoke in good faith and with just cause when it challenged his acts and declared him to be corrupt.

I have declared in this House that Judge Swayne is the most lawless man in the State of Florida. I take a lawless man to be one who will not obey the law; one who disobeys the law. I assert that Judge Swayne is responsible for more ill in my State than any man in it, or any 10 men, without reference to party. I say it is the indisputable function of this body, this grand inquest of the Nation, to send a presentable case to the Senate to try him on his general, well-known, corrupt record.

A judge is held to higher accountability than an individual, and yet in ordinary transactions, in the usual cases in the ordinary courts of justice, you can impeach a witness's credibility by proving his bad character for truth and veracity in the neighborhood in which he resides. A witness can be discredited on the ground that he is not worthy of belief, if the mass of the people who live around him declare him to be not worthy of belief.

Mr. JAMES. Is this Mr. Coombs a member of the Republican national executive committee now?

Mr. LAMAR of Florida. He is a member of the existing Republican national executive committee.

The State of Florida has challenged Judge Swayne's integrity twice. Once by a resolution in 1893 and once by a resolution in 1903. Now, listen to this resolution, passed in 1893:

House concurrent resolution requesting the Senators and Members of the House of Representatives from Florida in the Congress of the United States to procure an investigation by Congress of the conduct and judicial acts of Charles Swayne, judge of the United States district court for the northern district of Florida.

Whereas Charles Swayne, United States district judge for the northern district of Florida, has so conducted himself and his court as to cause the people of this State to doubt his integrity and to believe that his official actions as judge are susceptible to corrupt influences; and

Whereas the reputation of Charles Swayne as a corrupt judge is very injurious to the interest of the entire State of Florida: Now, therefore, be it

*Resolved by the House of Representatives of the State of Florida (the Senate concurring),* That the Senators and Representatives of the State of Florida in the Congress of the United States be, and they are hereby, requested to cause to be instituted in the Congress of the United States proper proceedings for the investigation of the administration of the United States circuit and district courts for the northern district of Florida by Charles Swayne, as United States district judge for the northern district of Florida, and of his acts and doings as such judge.

*Resolved further,* That the secretary of state of the State of Florida is instructed to certify to the Senators and Representatives from Florida in the Congress of the United States, under the great seal of the State of Florida, a copy

of this resolution and its unanimous adoption by the House of Representatives and Senate of the State of Florida.

Approved June 2, 1893.

STATE OF FLORIDA,  
*Office of Secretary of State.*

I, H. Clay Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and correct copy of house concurrent resolution No. 7, passed by session of 1893, as shown by session laws of 1893, and approved June 2, 1893.

Given under my hand and the great seal of the State of Florida at Tallahassee, the capital, this 25th day of February, A .D. 1904.

[SEAL.]

H. CLAY CRAWFORD,  
*Secretary of State.*

This sentiment prevailed in Jacksonville, where Judge Swayne lived at the time, and prevailed all over my State—that he was prostituting his office to make money. On that record my State indicted him by legislative resolution.

Now, let me submit the resolution of the Florida Legislature passed against Judge Swayne in 1903:

Senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida.

*Be it resolved by the Legislature of the State of Florida:*

Whereas Charles Swayne, United States district judge of the northern district of Florida, has so conducted himself and his court as to cause the people of the State to doubt his integrity and to believe that his official actions as judge are susceptible to corrupt influences and have been so corruptly influenced;

Whereas it also appears that the said Charles Swayne is guilty of a violation of section 551 of the Revised Statutes of the United States in that he does not reside in the district for which he was appointed and of which he is judge, but resides out of the State of Florida and in the State of Delaware or State of Pennsylvania, in open and defiant violation of said statute, and has not resided in the northern district of Florida, for which he was appointed, in 10 years, and is constantly absent from said district, only making temporary visits for a pretense of discharging his official duties;

Whereas the reputation of Charles Swayne as a corrupt judge is very injurious to the interests of the entire State of Florida, and his constant absence from his supposed district causes great sacrifice of their rights and annoyance and expense to litigants in his court;

Whereas it also appears that the said Charles Swayne is not only a corrupt judge, but that he is ignorant and incompetent and that his judicial opinions do not command the respect or confidence of the people;

Whereas the administration of the United States bankruptcy act in the court of said Charles Swayne and by his appointed referee has resulted in every instance in the waste of the assets of the alleged bankrupt by being absorbed in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is in effect legalized robbery and a stench in the nostrils of all good people;

*Be it resolved by the House of Representatives of the State of Florida (the Senate concurring).* That our Senators and Representatives in the United States Congress be, and they are hereby, requested to cause to be instituted in the Congress of the United States proper proceedings for the investigation of the proceedings of the United States circuit and district courts for the northern district of Florida by Charles Swayne as United States judge for the northern district of Florida, and of his acts and doings as such judge, to the end that he may be impeached and removed from such office.

*Resolved further,* That the secretary of state of the State of Florida be, and is hereby, instructed to certify to each Senator and Representative in the Congress of the United States, under the great seal of the State of Florida, a copy of this resolution and its unanimous adoption by the legislature of the State of Florida.



THE STATE OF FLORIDA,  
OFFICE OF THE SECRETARY OF STATE

UNITED STATES OF AMERICA, *State of Florida*, ss:

I, H. Clay Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and exact copy of senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida, passed by the legislature of Florida, session of 1903, and on file in this office.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this the 7th day of September, A. D. 1903.

[SEAL.]

H. CLAY CRAWFORD,  
*Secretary of State.*

Mr. LAMAR of Florida. Mr. Speaker, I am not here to impeach the letters of indorsement of Judge Swayne, written by people in the State of Florida. Judge Maxwell, who is a very careful man, said nothing in his letter of indorsement particularly about Judge Swayne's character. He said he was a capable judge and an industrious man and would make a good judge.

Mr. GILLET of California. Would Judge Maxwell recommend him for that high position if he were not a man of reputable character, even if he did not say anything about it?

Mr. LAMAR of Florida. I will say this frankly: I doubt if Judge Maxwell would do it. But, Mr. Speaker, that is not the question. It is not a question whether I think a man is dishonest or not; it is not a question whether at the moment that I indorse a man he is honest or not; the question is, What is he at last? Judge Maxwell would not put his name to any letter indorsing Judge Swayne or myself or any man in this House if he believed he was intellectually or morally unfit. I will say that for Judge Maxwell. But that is not the proposition. I do not know how limited or how extensive is Judge Maxwell's acquaintance with Judge Swayne, but that makes no difference.

If Judge Swayne could pile up testimonials here a mile high, it would only prove that those particular individuals believed him to be a good man; but the question is, What are the acts that we have here before this body on which we are trying him? Do those acts impeach him? If so, he is impeachable, despite any amount of letters that he can pile up from any number of men, Democrats or Republicans, in my State or outside of it. It is idle to talk about indorsements, except where the evidence is so conflicting that the jury are honestly in doubt which way to lean, whether to lean to conviction or to lean to acquittal. Whenever that is the case, then good character is always brought in as a determining factor, and very properly.

Mr. Speaker, what are the functions of this House sitting as a court of impeachment? It is not a question as to reasonable doubt as to guilt. Whoever heard of such a thing, and who believes it? Not a lawyer in this body and scarce a layman, except the gentlemen who urge it, and I say they do it because they are driven to it, and I make large allowance for an advocate with a bad case. The point is this: We can impeach a civil officer for high crimes and misdemeanors whenever this House believes he has misbehaved in office, whenever this House believes his general character is so corrupt among the people where he administers the law that his usefulness is gone, and

when it is a well-established conviction that he is corrupt. This House can impeach for specific acts of corruption, directly proven.

This House is not limited to the legal, technical definition which holds in a court of justice. When we speak of "high crimes and misdemeanors" we mean that which in its essence is dishonest. Every law writer states that proposition. We mean moral dishonesty, official dishonesty, dishonesty of character. That is "high crimes and misdemeanors," and is subject to impeachment by this body, and the only question is whether, upon this record, this whole testimony, the House will present articles of impeachment to the Senate that this case may be inquired into, that he be put upon the jury. Who ever heard of a grand jury presenting an indictment in open court based solely upon evidence that shows that the defendant is guilty beyond a reasonable doubt. That is a question for the trial jury to determine under the charge of the court. The function of this grand jury, this grand inquest of the nation, is to say whether or not there be probable cause or good grounds for believing the defendant, Charles Swayne, to be guilty as charged.

I have reputable authorities here from the highest law writers to show that whenever a judge presumed to know the law is so grossly ignorant or so grossly indifferent to the law, or so grossly indifferent to the public statutes of the land, as to make an error by which a citizen suffers, then he is impeachable, without regard to whether Belden and Davis committed contempt or not; and Foster, in his Commentaries on the Constitution, lays it down that had Judge Chase at this time spoken to a lawyer at the American bar as he spoke to William Wirt and others he would be impeached for misconduct in office; but the ethics of the profession were not as high then as now. Judges then made stump speeches everywhere, and the general custom of the country tended in behalf of Judge Chase because of the liberality that judges indulged themselves in in speeches before the country and to lawyers. But when Judge Swayne denounced these men as dishonest or ignorant and their conduct a stench in the nostrils of the people, he committed an impeachable offense, whether Davis and Belden were guilty of contempt or not. No judge is permitted to degrade a lawyer in his court.

No judge is permitted to insult and revile an officer of his court, and when he made that outrageously illegal sentence, when he should have known the law—Mr. Blount was not his legal adviser, and Belden and Davis were struck dumb no doubt by the contempt proceeding and said nothing—when he made that illegal sentence of both fine and imprisonment and superadded to it that gross outrage of attempting to disbar them, he committed another impeachable offense. A judge can not plead ignorance of the law and send a man to jail illegally for three days. Davis suffered three days in jail and paid \$100 and had himself spoken to as the vilest of criminals, and that language is spread in this record and has been bruited upon the floor of this House—and he an honorable member of the bar of the State of Florida. I say in defense of Mr. Davis, who has been characterized on this floor as a shyster, that he is as good a lawyer and as honorable a gentleman as is the man who denounced him.

I do not believe that that honorable gentleman would have said what he did unless he had been driven to it in defending Judge

Swayne. I make allowance for that speech, and I declare upon my knowledge of Mr. Davis that he is as good a man as sits upon the floor of this House.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. LAMAR of Florida. Mr. Speaker, I ask leave to extend my remarks in the Record.

The SPEAKER pro tempore. The gentleman from Florida asks leave to extend his remarks in the Record. Is there objection? [After a pause.] The Chair hears none.

Mr. LAMAR of Florida. It is evident that Judge Swayne's friends in Jacksonville and vicinity urged him at the time of the change of the boundaries of his district not to move his furniture or his family, "saying that the next Congress would be Republican and the district would be placed back in its usual form." This has been his motive from the beginning, not to acquire a residence in the northern district of Florida after the change of the boundaries of his district. He has resided in East Florida, had his friends there, and desired to remain. He expected the Republican Congress to nullify the action of a Democratic Congress and change the boundaries again and allow him to keep his home in St. Augustine as he had theretofore done.

Besides his own admissions in his statement above, it has been testified to by a number of witnesses that he had a residence, not in the northern district of Florida, but at Guyencourt, in the State of Delaware. The proofs before the subcommittee show that Judge Swayne spent a little more than two months each year attending to business in the northern district of Florida; that he generally arrived just before the opening of his court in Pensacola, and just as soon as the work of the court was over he left the city and went to his northern home again. Persons having business with him were notified to address him at Guyencourt, Del., and it was understood that was Judge Swayne's home place. He has boarded continually in Pensacola for years past at hotels and boarding houses, and for a very short time once rented a cottage in Pensacola. All of this shows that he had no bona fide residence in the northern district of Florida; that he has never acquired such a residence; that he violated a provision of the law which required him to reside in the district for which he was appointed; that he has inconvenienced litigants and lawyers having business before him; that he has not made a proper return of service to the people of the northern district of Florida for the salary he has been paid yearly, and for the commission of this high demeanor in not acquiring such a residence in his district, Judge Swayne should be impeached.

Judge Swayne should also be impeached for the corrupt use, for the benefit of himself and family, of a private car furnished by the receiver of a bankrupt railroad which was then in the possession of the court and the receiver appointed by Judge Swayne. Also for the corrupt use of a car furnished him by the Florida Central & Peninsular Railroad Co., conveying him and his family to the Pacific coast and back, such railroad company having important litigation involving valuable tracts of land pending before Judge Swayne for decision at the time of his use of the company's car, or

at least the car of the Jacksonville, Tampa & Key West Railroad, furnished and stocked by the Florida Central & Peninsular Railroad, which went to the extent of sending its traveling passenger agent, Mr. W. G. Coleman, with Judge Swayne on his Pacific coast trip, acting as general cicerone for Judge Swayne and his family upon that occasion. These corrupt acts as a judge require that Judge Swayne be impeached.

Judge Swayne should also be impeached for violating another act of Congress, which provides as follows:

For reasonable expenses for travel and attendance of district judges, directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in settlement of his accounts with the United States.

It is shown, in the testimony taken before the subcommittee, that Judge Swayne made and signed a certificate that his reasonable expenses for travel and attendance in holding court outside of the State of Florida were equal to \$10 per day for each day he so held court outside of his district. Whereas the testimony shows that his outlay for board and lodging at Dallas, Waco, and Tyler, Tex., ranged from \$1.25 to \$3 per day, and that his traveling expenses from Pensacola could not have exceeded \$50.

Samuel McIlhenny, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Give your name in full.—A. S. C. McIlhenny.

Mr. HIGGINS. What is your first name?

The WITNESS. Samuel.

By Judge LIDDON:

Q. Your residence. A. Dallas, Tex.

Q. Your business or occupation?—A. I am manager of the Oriental Hotel.

Q. How long have you been such manager?—A. Eight years.

Q. Were you such manager in January, 1896?—A. No; I was in the office in 1896. I was connected with the house.

Q. In January, 1896?—A. Yes, sir.

Q. Did you know Judge Charles Swayne?—A. Yes, sir.

Q. How long have you known him?—A. Well, I did not know the judge until I went to the hotel. I was in a former hotel there. He was there when I first went to the hotel.

Q. He was at the Oriental when you first went there?—A. Yes, sir.

Q. You say that was when?—A. 1896.

Q. Do you know the date in 1896?—A. The first part of the year. I don't know exactly the date; either January or February. In January, I think it was, some time.

Q. In January, 1896?—A. Yes, sir.

Q. Do you know whether Judge Charles Swayne was at Hotel Oriental in January, 1896?—A. He was there when I went there. I went there in the latter part or middle part of January.

Q. Do you know when he left?—A. No; I do not.

A. Can you refresh your memory from that memorandum? Did you make that [submitting paper]?—A. The cashier or bookkeeper made that—

Judge LIDDON. I submit this as an exhibit:

[Exhibit F.]

DALLAS, TEX., March 5, 1896.

*Mr. Chas. Swayne to the Oriental, Dr.*

[S. E. McIlhenny, manager.]

Mar. 1 to 3/6, 6 days	\$16.00
For board month of Feb., 9 to 2/29, 20½ days	68.35
Feb. 1 to 2/9, 8½ days	19.80
Express, 2/3, .60	.60
Laundry, 2/12, 1.30, 1.10; 3/5, .75	3.15
Wine, etc., 2/26, .40	.40
Telegrams, 2/24, 1.15	1.15
Drugs, 2/6, 1.35	1.35
	<hr/> 110.80
3/6, cr. by rebate on rate	\$13.80
3/6, cr. by cash	97.00
	<hr/> 110.80

The WITNESS (continuing). But I looked over it.

Q. Is that his handwriting?—A. Yes, sir.

Q. He is in charge of the books there?—A. Yes, sir.

By Mr. PALMER:

Q. Did you examine it to ascertain if it was correct or not?—A. Yes; I looked over it when he made it off the board book.

By Judge LIDDON:

Q. Do you know how much he paid for his board there in January, 1896?—

A. I do not, only from this memorandum.

Q. Can you tell from that memorandum?—A. Yes, sir.

[Exhibit G.]

DALLAS, TEX., January 31, 1896.

*Mr. Chas. Swayne to the Oriental, Dr.*

[S. E. McIlhenny, manager.]

For board month of Jan. 20 to Jan. 31, 1906	\$28.80
Laundry, 20/95	.95
Wine, etc., 20/50	.50
	<hr/> 28.25
Cr. Feb. 5, 1896, by chk	28.25

Q. How much was it?—A. According to that, in January he paid \$28.25. The books correspond with this statement exactly; that is, in January.

Q. He paid \$28.25?—A. Yes.

Q. Now, were you connected with the same hotel—you said you were—in March, 1896?—A. Yes, sir.

Q. Do you know whether Judge Swayne stopped at that hotel, then, in February or March, 1896?—A. Yes, sir.

Q. Do you know how much he paid?—A. He paid cash \$97.

Mrs. ANNIE E. RUSSELL, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Where do you live?—A. Tyler, Tex.

Q. How long have you been there?—A. About 22 years.

Q. You are engaged in running a hotel, or have been, or a boarding house there?—A. No, sir.

Q. Have not at all?—A. No, sir; we just had a very large house, and during this court Mr. Butler came and asked me if I would take some of the judges



and lawyers, and I told him I would. We had a large house and were renting the rooms. I had only been there about two years.

Q. That was at Tyler?—A. Yes, sir.

Q. Did Judge Swayne ever board with you there?—A. Yes, sir.

Q. Do you know the date?—A. No, sir; I did not make any memorandum of it, but it was during that trial of the bank there.

Q. In the United States court room?—A. Yes, sir.

Q. Do you know in what year it was?—A. It was last year.

Q. 1903?—A. Yes, sir.

Q. Do you know what part of the year—the early part or the latter part?—

A. It was January, as well as I can recollect.

Q. Do you know how long he stayed with you?—A. From the beginning until the end. I did not keep any memorandum of it at all. He was there from the time the court opened until it closed.

Q. You do not know how long; could not approximate the time?—A. I think it was about six weeks or more; I am not sure about that.

Q. Do you know what rate of board he paid you?—A. Yes, sir; \$1.25 a day.

Q. Did that include lodging?—A. Yes, sir.

Mr. CLAYTON. That included table board and lodging?

A. Yes, sir; everything.

By Judge LIDDON:

Q. \$1.25 a day?—A. Yes, sir.

Q. In the early part of the year 1903 he was there from four to six weeks?—

A. He was there during the whole term of court.

SUSAN LYLE DOWNS, having been duly sworn, testified as follows:

Direct examination by Judge LIDDON:

Q. Where do you reside?—A. Waco, Tex.

Q. You are engaged in the business of keeping a boarding house or hotel there?—A. A private boarding house.

Q. How long have you been so engaged, madam?—A. Seventeen years.

Q. Do you know Judge Charles Swayne?—A. Yes, sir.

Q. Has he ever been a guest of your house?—A. I think three terms of court. Of course, I am not sure, but that is my recollection.

Q. Three terms?—A. Three terms of court.

Q. Can you fix the date?—A. No, sir; I can not.

Q. Can you say whether it was since 1895?

Mr. HIGGINS. Speak of your own knowledge and without suggestion.

A. I really could not answer as to the year he was there. I could not; do not.

By Judge LIDDON:

Q. You can not say how many years, or approximate how many years ago?—

A. If you can tell when Judge Rector was disabled, I could tell you, but otherwise I can not.

Q. It was while he was holding United States court?—A. Yes, sir.

Q. And he stopped with you three terms?—A. Yes, sir.

Q. Did you ever know him to hold United States court there at any other time, except the three times he stopped with you?—A. No; I don't remember it.

Q. Do you know how long he stopped with you at the time he was there?—

A. No, sir; I do not. I know he was at the term of court, but I never made any memorandum of it.

Q. During a term of court three times?—A. I think so.

By Mr. CLAYTON:

Q. Do you mean the term while the court was lasting, the whole session of the court?—A. Yes.

Q. Not just for a day and then a day?—A. Oh, no.

By Judge LIDDON:

Q. You can not approximate how long he would stay at a time?

Mr. PALMER. About?

A. I really do not know.

By Mr. CLAYTON:

Q. Was he a transient, or did he stay a day or half a day?—A. He stayed during the whole term. I suppose probably from three to five weeks possibly.

Judge LIDDON. At a time?

A. Yes.

Mr. CLAYTON. That is to the best of your recollection, from three to five weeks?

By Judge LIDDON:

Q. Do you know what rates you charged him for board?—A. At the rate of \$40 for himself and \$65 for himself and wife.

By Mr. CLAYTON:

Q. What is that per month?—A. Per month. I do not want to do any injustice here. That is to the best of my knowledge.

By Judge LIDDON:

Q. And \$65 per month when he had his wife with him?—A. Yes, sir.

Q. Are those your best rates?—A. Yes, sir.

Q. All you ever charged?—A. Yes, sir.

Q. You said he was there sometimes without his wife?—A. I think two terms without Mrs. Swayne; one term with her.

Q. When he was there without her it was \$40 a month, or \$65 for the two?—A. Yes, sir.

Q. That included room as well as board?—A. Room and board.

Q. Was it winter or summer that he was there?—A. I am not sure whether it was two fall terms or two spring terms of court. There was one term and then two of the other.

The testimony taken before the subcommittee also establishes the fact that for every day Judge Swayne held court outside of his district since he has been a judge that he has received from the Treasury of the United States the sum of \$10 per day, which has been paid upon a certificate that he had expended that sum for reasonable expenses. Judge Swayne's accounts, as proved by an official of the Treasury Department, are as follows:

Name of marshal paying voucher.	Account No.	Place of holding court.	Period covered by voucher.	Amount paid.
Guillotte.....	9349	Baton Rouge, La.....	Apr. 19 to May 4, 1895.....	\$140
Do.....	9349	New Orleans, La.....	May 13 to May 31, 1895.....	170
Love.....	18650	Waco, Tex.....	30 days from Nov. 18, 1895.....	300
Do.....	18650	Dallas, Tex.....	40 days from Jan. 21, 1896.....	400
Do.....	18650	Graham, Tex.....	2 days from Mar. 9, 1896.....	20
Do.....	26252	Waco, Tex.....	18 days from Apr. 27, 1896.....	180
Do.....	26252	Dallas, Tex.....	36 days from May 18, 1896.....	360
Do.....	29482	Waco, Tex.....	28 days from Nov. 18, 1896.....	280
Do.....	35513	Dallas, Tex.....	42 days from Jan. 11, 1897.....	420
Do.....	35513	Fort Worth, Tex.....	12 days from Mar. 1, 1897.....	120
Do.....	38910	Waco, Tex.....	23 days from Apr. 20, 1897.....	230
Do.....	36910	Dallas, Tex.....	39 days from May 17, 1897.....	390
Guillotte.....	61252	New Orleans, La.....	19 days from Jan. 1, 1898.....	190
Do.....	44704	do.....	40 days from Jan. 20, 1898.....	400
Do.....	44704	do.....	11 days from Mar. 1, 1898.....	110
Do.....	44704	do.....	10 days from Mar. 11, 1898.....	100
Do.....	44704	do.....	10 days from Mar. 22, 1898.....	100
Do.....	61252	do.....	10 days from Apr. 1, 1898.....	100
Do.....	61252	do.....	15 days from Apr. 16, 1898.....	150
Do.....	61252	do.....	10 days from May 1, 1898.....	100
Do.....	61252	do.....	19 days from May 11, 1898.....	190
Fontellieu.....	54281	do.....	19 days from Nov. 21, 1898.....	190
Do.....	54397	do.....	10 days from Jan. 30, 1899.....	100
Do.....	54397	do.....	10 days from Feb. 8, 1899.....	100
Do.....	54397	do.....	10 days from Feb. 18, 1899.....	100
Do.....	54397	do.....	10 days from Feb. 28, 1899.....	100
Do.....	54397	do.....	10 days from Mar. 10, 1899.....	100
Cooper.....	56988	Birmingham, Ala.....	28 days from Apr. 4, 1899.....	280
Do.....	56988	do.....	19 days from May 22, 1899.....	190
Do.....	60217	Huntsville, Ala.....	29 days from Oct. 9, 1899.....	290
Fontellieu.....	70206	New Orleans, La.....	10 days from May 24, 1900.....	100
Do.....	70206	do.....	10 days from June 2, 1900.....	100
Do.....	70206	do.....	5 days from June 12, 1900.....	50
Cooper.....	69592	Birmingham, Ala.....	29 days from Sept. 3, 1900.....	290
Do.....	73109	do.....	8 days from Sept. 3, 1900.....	80
Grant.....	71960	Tyler, Tex.....	31 days from Dec. 3, 1900.....	310
Cooper.....	78334	Birmingham, Ala.....	21 days from Sept. 2, 1901.....	210
Houston.....	93964	Tyler, Tex.....	41 days from Jan. 12, 1903.....	410

It is evident that Judge Swayne has made false certificates, and upon these false certificates he has received money from the Federal Government, more than his reasonable expenses and attendance, and to that extent he has practiced extortion upon the Federal Government, and for this crime he should be impeached.

Judge Swayne should also be impeached for the illegal and arbitrary sentence imposed on Belden and Davis.

In this case it is unnecessary to enumerate all the circumstances that led up to the punishment of Belden and Davis for alleged contempt by Judge Swayne. It is sufficient to say, in brief, that the title to certain lands situated in the city of Pensacola was involved in a lawsuit pending in Judge Swayne's court. Judge Swayne had so acted by negotiating with a real estate agent in Pensacola for certain of the lands which were in litigation before his court as to induce the attorneys for the plaintiff in that litigation to believe that Judge Swayne owned an interest in such land.

The attorneys for the plaintiff thereupon dismissed their suit in Judge Swayne's court and began a suit in ejectment against Judge Swayne in the courts of the State of Florida. This they had a perfect legal right to do. Judge Swayne himself did not deny their right to bring this lawsuit against him, but he held that the bringing of such suit in the State court was an attempt on the part of Belden and Davis to force him to recuse himself as judge in the Florida McGuire litigation in his (Judge Swayne's) court, so that another judge might be called into the Federal court to try the title to the lands in question. For this supposed offense on the part of Belden and Davis Judge Swayne caused a rule to issue against Belden and Davis that they show cause before him why they should not be punished by him for contempt of court.

Belden and Davis, in answer to this rule, made a written denial, submitted it in his court, that they had committed no contempt and had not intended to commit any contempt. With this showing they were entitled to be discharged.

It was no contempt of Judge Swayne's court to sue him in the courts of the State of Florida. Judge Swayne knew and admitted this fact; but he contended that their act in so suing him in the State court was a contempt of the "dignity and good order" of the district court of the United States. The act of Congress relating to punishment for contempts of court is as follows:

*CHAP. XCIX.—An act declaratory of the law concerning contempts of court.*

*Be it enacted, etc.,* That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, decree, or command of the said courts.

*SEC. 2. And be it further enacted,* That if any person or persons shall, corruptly or by threats of force, endeavor to influence, intimidate, or impede any juror, witness, or officer in any court of the United States in the discharge of his duty, or shall, corruptly or by threats of force, obstruct or impede, or endeavor to obstruct or impede, the due administration of justice therein, every person or persons so offending shall be liable to prosecution therefor by

indictment, and shall, on conviction thereof, be punished by fine not exceeding \$500 or by imprisonment not exceeding three months, or both, according to the nature and aggravation of the offense.

Approved, March 2, 1831.

The Supreme Court of the United States has construed this act of Congress, one decision of that court being contained in 19 Wallace, page 511, where it is said:

The act of 1831 is therefore to them (the district courts) the law specifying the cases in which summary punishments for contempt may be inflicted. It limits the power of these courts in this respect to three classes of cases—

First. Where there has been misbehavior of a person in the presence of the court, or so near thereto as to obstruct the administration of justice;

Second. Where there has been misbehavior of any officer of the court in his official transaction; and

Third. Where there has been disobedience or resistance by any officer, party, juror, witness, or other person to any lawful process, order, rule, decree, or command of the courts. And thus seen, the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgment, and processes.

It is clear that Belden and Davis did not come within the definition of any one of the offenses set out by the Federal statute, and named in the above decision by the Supreme Court of the United States. Belden and Davis committed no contempt against the "dignity and good order" of the United States district court for the northern district of Florida. Their offense simply lay in suing Judge Swayne in the State courts. That and nothing more. Their doing what they had the right to do was their only offending, and for this offense of doing what they had a perfect right to do Judge Swayne punished them; and in the very sentence of punishment he committed an impeachable offense, because the law permits the court and the judge to inflict only a fine or imprisonment. He can punish by either one or the other, but can not do both.

Judge Swayne himself admitted in his statement before the subcommittee that he made a mistake of law in punishing Belden and Davis by both fine and imprisonment. And the question is, he being a judge supposed to be learned in the law, will he be heard to say he made such a mistake? Considerable light is thrown upon Judge Swayne's sentence of Belden and Davis and his intent in imposing the same by his language to them at the time he imposed this illegal double sentence.

In his testimony before the subcommittee, Simeon Belden testified as follows:

Simeon Belden testifies:

Q. Now, I will ask you what was the manner of Judge Swayne when he was inflicting this penalty?—A. Well, it was gross and offensive; he entered with a slanderous attack on the attorneys.

Q. Very slanderous?—A. Yes.

Q. Tell what he said.—A. I don't recollect his words exactly; it was published in the newspapers here.

Q. It was harsh and offensive?—A. Very, indeed. (P. 264-265.)

E. T. Davis, page 284:

Q. At the time of imposing this sentence what was Judge Swayne's manner?—A. Very abusive.

Q. Can you state what he said?—A. I don't know that I can state it in so many words. He called us ignorant, said our action was a stench in the nostrils of the people, and a good many other things I can not repeat.

Q. His manner was very harsh and abusive?—A. Extremely so.

In using this very language, outrageous in its nature, tyrannical in its character, to honorable lawyers and members of the bar of his court, Judge Swayne committed an impeachable offense. No judge is permitted to villify, abuse, and outrageously calumniate a lawyer at the bar of his court. He commits an impeachable offense when he does so. He invades the private rights of an attorney, his personal liberty, and his self-respect when he indulges in such grossly outrageous calumny toward him. The law will not permit a judge to so abuse his authority.

The House of Representatives impeached Judge Chase, of the United States Supreme Court, in part for his grossly outrageous conduct toward lawyers in his court. The law protects and should protect a lawyer against the tyranny and outrage of a presiding judge.

Judge Swayne was angry with Belden and Davis for bringing suit against him in the courts of the State of Florida. He intended to punish them for so doing, and he did punish them. He used his power to punish arbitrarily, and imposed on Belden and Davis a double sentence of fine and imprisonment, when the law of the United States restricted him to one or the other, fine or imprisonment.

Judge Swayne not only imposed this dual illegal sentence upon Belden and Davis, he not only vilified them in outrageous language, but he also attempted to disbar them from practicing in his court for a period of two years. It was only when his attention was called to the fact that he could not impose this sentence of disbarment that he remitted the same.

He showed his temper, ill will, and judicial malice against these two lawyers when he sought thus to disbar them, as well as to vilify them, and to impose the double and illegal sentence of both fine and imprisonment. All of this shows the vindictive temper of Judge Swayne toward Belden and Davis. His judicial malice is apparent in these very acts beyond any controversy. And the law does not permit a judge to so outrage justice by imposing illegal, wrongful, and thoroughly outrageous sentences against his attorneys at law who practice in his court, or upon any other person. The law throws a mantle of protection around attorneys and their dignity and personal rights, as well as it does around the dignity and personal rights of the presiding judge. Were this not the case, the law would be grossly deficient.

Judge Swayne's answer to the charge that he illegally imposed the double sentence of both fine and imprisonment and that he entered an order of disbarment against these two attorneys, Belden and Davis, is that he made a mistake of law. This mistake he is not permitted by the law to make. It is his duty to know the law. He can not plead ignorance of the law. Such gross ignorance of the law is an impeachable offense in itself. He must know the law. He can not injure attorneys in their personal rights and place illegal sentences upon them, and condemn them to jail, to fines, and to disbarment, and then escape the consequences of his outrageous acts by claiming that he made a mistake. The law will not permit him to make such an excuse. He is a judge and is presumed to know the law. Such a flimsy excuse will not excuse him here. I quote from the opinion of a great lawyer, Samuel J. Tilden, as to what excuses judicial mistakes and what the duty of a judge is with reference



to the requirement that he shall be learned in the law; that he shall know the law; that he shall not cause hardship to anyone by reason of his want of knowledge of the law. For want of such information, information easy of ascertainment, information that the judge is presumed by law to have, Judge Swayne is impeachable.

Error of judgment as to what is the law, within reasonable limits, will not be imputed to a judge as official misconduct. But the principle that excuses such error is subject to some qualifications. It is easy to imagine cases in which the error might be so gross as to show a degree of ignorance that is inexcusable, or to indicate mental incapacity, or to evince culpable inattention or indifference to duty, or actual bad faith. Chief Justice Shaw, who was one of the counsel for the managers in the case of Prescott, well said:

"By the Constitution, which is a law of the highest nature, every officer is bound to take an oath faithfully and impartially to perform and discharge all the duties incumbent upon him as such officer, according to the best of his abilities and understanding, agreeably to the rules and regulations of the Constitution and the laws of this Commonwealth.

"To perform these duties faithfully and impartially he must understand them, and he must use due diligence to acquaint himself with them. I should therefore hold that any gross and continued neglect of the ordinary means of information—as if an officer were to disregard those public statutes which are made from time to time and the knowledge of which would be necessary to the intelligent and proper discharge of the duties of his office; or if the judge of an inferior court should willfully neglect to inform himself of those adjudications of superior courts which, as precedents, ought to bind and govern him, or in any way should willfully neglect the means of qualifying himself for the faithful and intelligent performance of his duties—such neglect would be misconduct punishable by impeachment."—(Trial of Judge Prescott, p. 181.)

Judge Chase, of the United States Supreme Court, was impeached by the House of Representatives, in part, for insulting lawyers at the bar of this court. An eminent law writer upon the Constitution of the United States declares that Judge Chase's conduct at the present day would undoubtedly cause his conviction. At the time of Judge Chase's impeachment it was customary for judges to make political addresses and enter into politics, and more license was given to their speech than is permitted at the present day, when public opinion is more stringent as to what is considered judicial propriety. I quote an extract from Foster on the Constitution, volume 1, paragraph 90, page 539:

Judge Chase's conduct, however, on the trial was so scandalous that it would have undoubtedly caused his conviction upon an impeachment at the present day. He had throughout the case endeavored to secure a conviction. He had insulted eminent counsel, among others William Wirt, to such a degree that they finally refused to continue the arguments in the course of which they had been interrupted. It was said that before the trial he had publicly announced "that he would teach the lawyers in Virginia the difference between liberty and licentiousness of the press," and that he had told the marshal that if he had "any of those creatures or people called Democrats" on the panel of jurymen he should strike them off. He had constantly throughout the trial referred to counsel, who were men of mature age, as "young gentlemen," in order to influence the jury by these as well as other sneers which abounded throughout the reports of the trial.

For this act of fining and imprisoning Belden and Davis, when he should have only fined or imprisoned, if at all, and for insulting Belden and Davis at the bar of his court, without cause and without justification, and for attempting to disbar these attorneys, Judge Swayne should be impeached.

In his judicial tyranny and judicial insults, directed against Belden and Davis, Judge Swayne showed that he was neither a

learned judge nor a gentleman. He proved he was without those feelings of mercy and consideration for the feelings of others which constitute the greatest ornament in a judge.

An eminent poet has declared:

I would not enter on my list of friends (if graced with polished manners and fine sense, but wanting sensibility) a man who needlessly sets foot upon a worm.

But we find Judge Swayne here, without sense or sensibility, needlessly, tyrannically, setting his judicial foot upon two lawyers, two gentlemen at the bar of his court. I desire to contrast with this action of Judge Swayne and his language toward Belden and Davis the action and language of another Federal judge—Judge Thomas, in the State of New York. Ex-Congressman Edmund H. Driggs, of Brooklyn, was convicted for violating a criminal statute of the United States, and upon his conviction for the same was sentenced by Judge Thomas to one day's imprisonment in jail and the payment of a fine of \$10,000. The ex-Congressman was convicted (after his election, but before taking his seat in Congress) of securing a contract for the Brandt-Dent Co., whereby that concern sold to the Post Office Department 250 of its automatic registers. The company received \$250 for each machine, and Driggs's share was \$50 for every machine, or \$12,500 in all. Driggs on the stand testified that this \$12,500 was paid to him by the Brandt-Dent Co. not only for selling machines to the Post Office Department, but to the trade generally. He said he never sold the machines as a Member of Congress, and that the company employed him as an ordinary salesman.

The defense was set up by Driggs that he did not know he was violating any law, and yet he was convicted. Judge Swayne explains that when he placed a double sentence of both fine and imprisonment on Davis and Belden and sought to disbar them that he did not know he was violating any law, and yet he hopes to go "scot free," though these attorneys suffered both fine and imprisonment.

The money fine placed on Driggs by Judge Thomas was less than the illegal commissions he made out of the Brandt-Dent Co. So at least it was a just fine, though apparently large in amount; but it did not even recoup to the Government the amount Driggs had illegally made. The statute under which Driggs was sentenced permitted both fine and imprisonment. The statute under which Judge Swayne imposed the illegal double sentence of fine and imprisonment on Belden and Davis only allow for fine or imprisonment.

In sentencing Driggs, Judge Thomas used this language:

Indeed, a man of honorable feeling, although he has erred, would abhor the retention of what came to him illegally. I believe that such will be your attitude. There are those who do not think well of kindness in judicial utterance on an occasion like this. They confuse harshness with firmness; mistake incivility of speech for forceful administration of the law. They consider that the offense wipes away all beauty of character and excellence of citizenship. I do not underestimate the duty or value of plain speaking, but in my view the dignity of the court and the efficacy of punishment are not diminished by civility or even benignity toward one whose worth of character, however impaired by error, is a real possession that may forever exist.

The heart and judgment of society, while demanding adequate punishment, strongly favors the preservation of whatever is good and restoration to right conduct of life. If I have ever fallen below this standard of judicial action an opportunity for helpfulness has been lost.

You will find that the measure of rectitude in your past life will join with the private and civic virtues that you may achieve and maintain in the future, and that in the end you will be judged by your whole career, and not alone by this intervening fault and failure.

What an immeasurable distance between these noble words of Judge Thomas and the cruel, vindictive, malicious, and ungentlemanly language of Judge Swayne, used to two honorable attorneys practicing in his court. Judge Swayne resembles Judge Thomas in intellect, in character, in learning, in all the sweet virtues of life, and in that judicial courtesy which makes so large an ornament in a judge's make-up only as Benedict Arnold might resemble George Washington. Judge Thomas's mild sentence upon ex-Congressman Driggs is the severest condemnation upon Judge Swayne in his cruel and vindictive sentence upon Belden and Davis.

Judge Swayne's crime in this punishment of Belden and Davis is all the greater because he sought to do it under color of his judicial office and upon the pretext of upholding the dignity of the Federal court of Florida. Such fraudulent judicial conduct is condemned by all of the great authorities on the law.

There is yet another offense against public justice which is a misdemeanor of deep malignity, and so much the deeper, as there are many opportunities of putting it in practice and the power and wealth of the offenders may often deter the injured from a legal prosecution. This is the oppression and tyrannical partiality of judges, justices, and other magistrates in the administration and under color of their office. (4 Stephen's Com., 292.)

Judge Swayne's crime in punishing Belden and Davis was outrageous; was cruelly severe; was of the same character of crime that was charged against Warren Hastings in his conduct in India in imposing most outrageous penalties for the smallest offenses. And the greatest debater in the British House of Commons, one of the managers of the impeachment against Warren Hastings, lays down the law in the following language, and condemned that tyrannical representative of Great Britain in India for such a crime as Judge Swayne committed against Belden and Davis:

And if there be one office of a judge more sacred than another, after to do justice, to acquit the innocent and condemn the guilty, it is to proportion the punishment to the crime. For he who annexes great punishments to small crimes and light punishments to heavy and grave offenses, differs little from him who condemns the innocent and acquits the guilty. If a half million is exacted as a punishment for so light a crime as delay of payment of a small sum, it is little better than if the innocent be found guilty, because he who is nearly innocent has a punishment fit only for those that are essentially guilty. On the other hand, if he who is greatly criminal is lightly punished, the object of punishment, which is to prevent the commission of crimes, is lost. Every judge therefore who is guilty of an inattention to the due proportion between crimes and punishments forgets the main part and principle of his duty. If he does it in favor of the criminal and not against him, it is something more excusable. (Extract from the speech of Charles James Fox at the trial of Warren Hastings, p. 256.)

In the next place, Judge Swayne should be impeached for his arbitrary and illegal sentence imposed on William C. O'Neal for an alleged contempt of the authority of his court. W. C. O'Neal cut A. Greenhut in a personal difficulty in the city of Pensacola, in the office and store of the said Greenhut. Said store was some distance removed from the United States court room and building in the city of Pensacola, a distance of at least 400 feet. Judge Swayne was not

in the city of Pensacola when the difficulty occurred between O'Neal and Greenhut.

Some time after that occurrence Judge Swayne returned to Pensacola and issued a rule upon W. C. O'Neal to show cause why he should not be punished for contempt for his assault upon Greenhut. Greenhut was a trustee in bankruptcy in Judge Swayne's court. The difficulty between O'Neal and Greenhut, according to O'Neal's statement, grew out of money claims which O'Neal thought to belong to the bank of which he was president.

In his sworn answer to the rule to show cause why he should not be adjudged in contempt of court, O'Neal purged himself of any contempt, or of any intent to commit a contempt, against the authority of the Federal court. Judge Swayne's authority to punish O'Neal for contempt was limited by the Federal statute. This statute reads as follows:

That said courts shall have power to impose and administer all necessary oaths and to punish by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempt shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions and the disobedience or resistance by any such officer or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said court.

It will be seen from this statute that O'Neal did not commit any offense in the presence of the court or in the vicinity thereof; that he was not an officer of the court, and that he did not resist any "writ, process, order, rules, decree, or command" of the Federal court.

But notwithstanding his want of authority, notwithstanding the answer of O'Neal purging himself of contempt, Judge Swayne sentenced him to 60 days in the county jail of Escambia County. For this act of judicial ignorance and tyranny Judge Swayne should be impeached. The authorities cited above apply to this case also, and show that Judge Swayne for his arbitrary and tyrannical acts should be brought to justice.

The gentleman from Maine [Mr. Littlefield] denounces W. C. O'Neal as an assassin, and declares that this prosecution of Judge Swayne is a legacy of O'Neal's hate, malice, and revenge, or words to that effect. I leave it to the sense of justice of this House and of the country as to who displays the most assassinous disposition, the man who strikes with a knife in open combat in the heat and feeling of a personal struggle or the man who vilifies the memory of the dead. The trouble with the gentleman from Maine [Mr. Littlefield] is that the memory of O'Neal "will not down." That was what troubled Macbeth, the murderer of Banquo, that his victim's ghost would not "down," but rose perpetually to alarm and unnerve him. Here's what Macbeth said about his victim:

The time has been that when the brains were out  
The man would die, and there an end; but now  
They rise again, with twenty mortal murders  
On their crowns, and push us from our stools;  
This is more strange than such a murder is.  
Thy crown does sear mine eyeballs.

And it is because the memory of O'Neal survives to-day and lives to plague Charles Swayne that his defenders are so much concerned about the character and nature of W. C. O'Neal. O'Neal, broken in health by the unjust and tyrannical sentence of Judge Swayne, went to an untimely grave. If his shadowy hand can stretch beyond that grave and clutch the throat of Charles Swayne and drag him to a just punishment, it will be not only poetical justice, but literal, legal justice.

Now, Mr. Speaker, I have set out the crimes for which Charles Swayne should be impeached, and this House is engaged in considering the question of his impeachment. What is the remedy by impeachment under the Constitution of United States?

It is designed as a method of national inquest into the conduct of public men. If such is the design, who can so properly be the inquisitors for the nation as the representatives of the people themselves? They must be presumed to be watchful of the interests, alive to the sympathies, and ready to redress the grievances of the people. (Story on the Constitution, extract from par. 689, vol. 1, p. 487.)

The object of prosecutions of this sort in both countries is to reach high and potent offenders, such as might be presumed to escape punishment in the ordinary tribunals, either from their own extraordinary influence or from the imperfect organization and powers of those tribunals. These prosecutions are, therefore, conducted by the representatives of the nation, in their public capacity, in the face of the nation and upon a responsibility which is at once felt and revered by the whole community. The notoriety of the proceedings; the solemn manner in which they are conducted; the deep extent to which they affect the reputation of the accused; the ignominy of a conviction, which is to be known through all time, and the glory of an acquittal, which ascertains and confirms innocence—these are all calculated to produce a vivid and lasting interest in the public mind, and to give to such prosecutions when necessary a vast importance, both as a check to crime and an incitement to virtue. (Story on the Constitution, extract from par. 688, vol. 1, p. 486.)

Among the separate functions assigned by the Constitution to the Houses of Congress are those of presenting and trying impeachments. An impeachment, in the report of the committee of detail, was treated as an ordinary judicial proceeding, and was placed within the jurisdiction of the Supreme Court. That this was not in all respects a suitable provision will appear from the following considerations. Although an impeachment may involve an inquiry whether a crime against any positive law has been committed, yet it is not necessarily a trial for crime; nor is there any necessity, in the case of crimes committed by public officers, for the institution of any special proceeding for the infliction of the punishment prescribed by the laws, since they, like all other persons, are amenable to the ordinary jurisdiction of the courts of justice in respect of offenses against positive law. The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. Such a cause may be found in the fact that either in the discharge of his office or aside from its functions he has violated a law or committed what is technically denominated a crime. But a cause for removal from office may exist where no offense against positive law has been committed, as where the individual has, from immorality or imbecility or maladministration, become unfit to exercise the office. The rules by which an impeachment is to be determined are therefore peculiar and are not fully embraced by those principles or provisions of law which courts of ordinary jurisdiction are required to administer. (Constitutional History of the United States, by George Ticknor Curtis, 481, 482.)

The term "high crimes and misdemeanors" has no significance in the common law concerning crimes subject to indictment. It can be found in the law of Parliament and is the technical term which was used by the Commons at the bar of the Lords for centuries before the existence of the United States.

The Constitution provides that—

"The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior."



This necessarily implies that they may be removed in case of bad behavior. But no means except impeachment is provided for their removal, and judicial misconduct is not indictable by either a statute of the United States or the common law.

In 1803 Pickering, a district judge of the United States, was convicted on impeachment for his official action in surrendering to the claimant, without requiring the statutory bond, a vessel libeled by the United States, for refusing to allow an appeal from this order, and for drunkenness and profane language on the bench. None of these offenses were indictable by the common law or by statute. (Foster on the Constitution, extract par. 93, pp. 582, 583, 584, 585, 586, 587.)

I quote again from Samuel J. Tilden's Public Writings and Speeches, defining what are impeachable offenses. This country has produced no greater lawyer than Samuel J. Tilden:

Any conduct in a judicial office which degrades it in the public esteem, which scandalizes the administration of justice, or which justly impairs the respect and confidence of suitors at the bar and of the people generally in the impartiality, purity, and trustworthiness of the court, is an impeachable offense.

Misconduct wholly outside of the functions of an office may be of such a nature as to exercise a reflected influence upon those functions, and to disqualify and incapacitate an officer from usefully performing those functions. This is especially and peculiarly true of the judicial office. In such cases the misconduct constitutes an impeachable offense and is ground for removal. The words "high crimes and misdemeanors" are not limited to official acts.

Mr. George Ticknor Curtis, in his History of the Constitution of the United States, volume 2, page 260, has clearly defined the nature and cause of impeachment:

"The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. Such a cause may be found in the fact that, either in the discharge of his office or aside from its functions, he had violated a law or committed what is technically denominated a crime. But a cause for removal from office may exist when no offense against positive law has been committed, as when the individual has, from immorality or imbecility or maladministration, become unfit to exercise the office." (Tilden's Public Writings and Speeches, pp. 478, 479, 480, 481.)

It is highly important that the law relating to impeachment be unflinchingly applied in a case that demands it. There is no other governmental remedy for bringing a high public offender to justice except the remedy by impeachment. This is recognized in the foregoing authorities I have cited. It is borne out by the language of one of England's greatest public men. I quote an extract from the speech of Charles James Fox in the trial of Warren Hastings:

My lords, I therefore say that I feel a proper glory, a proper pride, in my situation; that I stand in this place by the orders of the House of Commons and representing them; that I stand representing the Commons in their most respectable function—I mean the function of impeachment—in that function upon the existence of which and upon a manly exercise of which upon the part of the Commons depends every particle of the law of England; depends every personal security, depends the conduct of judges in all departments, and depends everything that we hold dear in this country.

If among the various functions of the House of Commons there be one in which they appear with more peculiar dignity, with more peculiar utility—for utility and dignity are inseparable in great political constitutions—I say if there is one circumstance in which they appear with more utility, and consequently with more dignity, it is in the sort of business in which they are now engaged, when they are acting in their inquisitorial capacity and appearing before your lordships in your judicial capacity.

My lords, the laws of this country are often praised; they are often commended. But what security is there for the laws of this country? Laws may be good; judges may be corrupt. What is to secure the duty of judges; what is to secure their just execution of the laws of this country, but judges over

them, namely, your lordships? For I know no other tribunal before whom such judges should be arraigned. Your lordships can arraign them upon the impeachment of the House of Commons, and therefore I will venture to state to your lordships an opinion not new and which, certainly in the enlightened age in which we live, will not be controverted, that upon the doctrine of impeachment, upon the right of the Commons of Great Britain to come to the bar of your lordships, depends the whole common law of this country; depends the whole spirit of the law of this country; depends the personal privilege of every individual of this country, depends everything that we hold most sacred and hold most dear.

My lords, if it be a part of it, I say it is a part more valuable than the whole, because it is a part without which the whole would be totally ineffectual and totally useless. To have laws is one thing; to have judges is another. The judges in modern times have—thank God, they have—preserved a character of purity unequalled perhaps in the example of any modern countries, and greatly superior to those in more ancient times. I mean not to detract from the character of those great and reverend persons, but I will venture to state that we are not in public to argue upon the particular characters of individuals. The constitution rests not upon such securities. The purity of the judges I will state to be owing to that to which the purity of all men, politically speaking, must be stated to be owing, namely, to the putting them out of the temptation of interest on the one hand and putting them under the dominion of just and legal fear on the other.

If the judges of England have been more incorrupt and pure than the judges of other countries, if they have been more so in modern times than they have been in earlier periods, to what is it owing? It is owing to the acknowledged law of England, namely, that the Commons in Parliament may impeach a judge before the tribunal of the House of Lords, and that there is a law over him, the *lex et consuetudo parliamenti*, to which he is obliged to pay obedience, which he is obliged to bow to, by which his actions must be judged, and which gives the only security for the due execution of his trust in the distribution of justice in the inferior tribunals in which he presides. (Speech of Fox, trial of Warren Hastings, p. 185.)

These law authorities and these views of great statesmen show that the whole safety of government, so far as its highest officials go, depends on keeping them in check and in fear against official delinquency by the remedy of impeachment. It is the duty of this House to resort to that remedy whenever a high public official furnishes the cause for invoking it.

Judge Swayne has not acquired in his judicial district a residence. He has charged the Government more for expenses than he paid out. He has used the cars of a bankrupt railroad corporation in his hands for his own personal use and for the private gain of himself and his family. He has been guilty of judicial tyranny in imprisoning and fining Belden and Davis and in attempting to disbar them, and in using the most violent, outrageous, ungentlemanly, and malicious language toward them. He imposed an illegal and arbitrary punishment on W. C. O'Neal. And for all of these crimes he should be impeached. This House will fail to do its duty if it fails to impeach Judge Swayne. His conduct throughout his judicial career in the State of Florida has been essentially dishonest.

The authorities that I have cited above show that the very essence of the words "high crimes and misdemeanors" is dishonesty. In the use of the property of railroads in his hands for the monetary gain of himself and family he was dishonest. In his false certificates of his accounts he was dishonest. In not residing in his district he violated a plain provision of the statutes of the United States—a statute mandatory in its character. For his tyranny toward Belden and Davis and W. C. O'Neal he has incurred the penalty of the law denounced against such tyranny, viz, that he should be impeached for his

crime. And I repeat it, Judge Swayne's whole hope before this House of Representatives is founded upon an appeal, openly and in secret, to partisan prejudice and partisan passion and sectional hate.

Before the subcommittee his statement discloses his defense upon that ground. I quote his testimony, in part, before that committee:

Immediately upon assuming the duties of judge, in October, 1889, a large number of indictments were found by the grand jury for election frauds committed during the election of 1888. The local newspapers were full of false and libelous articles against the court and its officers for many months. Witnesses summoned before the grand jury were intimidated and in one or two instances murdered. Deputy Marshal Saunders was murdered at Quincy, Gadsden County, and no effort was made to punish the offender. Other United States deputy marshals were intimidated and driven from the performance of their duties by armed mobs in sympathy with those charged with the political offenses, until the officers of that court were unable to execute these processes in a large portion of the district.

Congress met early in December, and, when my nomination was sent to the Senate, those under charges of election frauds in the northern district of Florida and their friends made a vigorous effort to defeat my confirmation, which was not passed by that body until April 1, 1890.

The history of that contest and the debates thereon, as reported in the Congressional Record, are interesting reading to-day in connection with the oft-repeated assertion of my enemies that there is no politics in this movement to impeach. Threats were freely made against the court and its officers. On May 19, 1901, the United States courthouse at Jacksonville was found to be on fire about 1.30 a. m. It was burned and all of the United States court records were consumed, including the indictments for political offenses. In November, 1892, one of the attorneys of Jacksonville, Fla., who had been an attorney in the defense for those indicted for election frauds, was elected to Congress and introduced a bill in the House which changed the boundaries of the northern judicial district of Florida from the old lines to those now existing. This act finally passed, both branches of Congress being Democratic, and it was signed by President Cleveland on July 24, 1895.

That outlined his defense early in this proceeding.

On the 25th day of March, 1904, the Washington Post contained a statement issued to the country by ex-Senator Anthony Higgins, of Delaware, and ex-Senator W. E. Chandler, of New Hampshire. This statement was along the line of Judge Swayne's defense, as set out above. The article from the Post is as follows:

Ex-Senators Anthony Higgins, of Delaware, and William E. Chandler, of New Hampshire, have issued a statement relative to the proposed impeachment of Federal Judge Swayne. They were Senators who voted to confirm him as judge and declare that he has been for years the target of unjust opposition. The statement issued over their signatures is as follows:

"We, the undersigned, ask the considerate attention of all persons interested therein to the attempt to impeach Charles Swayne, United States district judge for the northern district of Florida. We participated in securing his confirmation on April 1, 1890, by a partisan vote of 33 to 24, after very bitter attacks had been made upon him through many days of discussion.

"Some of his most extreme opponents continued their animosity, and on July 23, 1894, when there was a Democratic President, Senate, and House of Representatives, procured the passage of an act cutting down the limits of Judge Swayne's district, leaving him only a small territory, embracing Pensacola and Tallahassee, where there was little United States business. Since that time the Judge has performed promptly all the duties required in his district, and has been assigned by the circuit court of appeals to judicial duty of the highest importance outside his own district in other parts of the circuit.

"His character when appointed was good; his judicial conduct since has been the subject of no just cause of reproach, and there is not, we say, after careful inquiry, any reason for attacking or impeaching him.

"The Judiciary Committee of the House has, however, at a meeting not fully attended, and against a strong minority of its members in attendance, voted to ask the House to prefer to the Senate articles of impeachment. The question

thus raised will be decided by the House according to its merits, as they will appear from the majority and minority reports and full debate. We are sure from our own investigation that Judge Swayne will appear to the House to be completely justified as to any and every transaction which may be called into question by the majority report, and that he will, indeed, appear deserving of high praise for his just and courageous action in connection with the subjects which have been most criticized.

"If this is an attempt to frighten him into resigning his judgeship, or to prevent him from the fearless discharge of his duties hereafter, it will fail equally with the assaults that have been made upon him, beginning in 1889 and continuing down to the present extraordinary effort to defame and injure an upright and just judge."

The letter read on the floor of this House by the Representative from Ohio, Mr. Grosvenor, from Judge Don A. Pardee, is upon the same line. I quote an extract from the same, as follows:

The first time I met Judge Swayne after his appointment he told me that the President and the Attorney General were very much concerned to have the laws of the United States vindicated in the State of Florida, and that the parties who were charged with committing the election outrages should be prosecuted and particularly that the Attorney General had impressed upon him the great importance of providing early terms of court with a view that those cases could be taken up. Immediately following this, a great many prosecutions were instituted, indictments found, etc., to bring about the trial and conviction of parties charged with violating the election laws. The election frauds had been so numerous and so many people were involved therein that these prosecutions engendered an intense feeling against the judge and all the officers of the court; particularly was the judge singled out as the prime mover.

I quote again from Judge Pardee's letter:

I have written this long letter because I really feel that without the political prejudices against Judge Swayne there would be no impeachment, and that in justice to a southern judge who was a Republican before he was appointed, and who was appointed because he was a Republican, as there are no Republican Congressmen from the South, some of the northern brethren ought to look carefully into the case and be sure that an impeachment ought to be voted before putting a judge to the disgrace of an impeachment, consequent expenses, trial, and tribulation to himself and family resulting therefrom.

All of this shows that Judge Swayne's main reliance in this House and throughout this country is an attempt to awaken partisan feeling and sectional prejudice in his behalf. I hope his defense, founded on that line, will fail in this House, and I believe it will. The State of Florida, I repeat again, has no political vengeance to gratify in attempting to impeach Judge Swayne before this House of Representatives. I have said, and I repeat the statement again, that there have been other Federal judges in Florida besides Judge Swayne. Judge Locke, district judge at this time, of the southern district of Florida, has the confidence and the respect of the people of Florida.

The opposition to Judge Swayne in the State of Florida grows not out of political election cases, but out of his maladministration of his judicial office in that State. It is useless to go over the history of those election cases in Florida in 1889-1890 in Judge Swayne's court, but it is enough to state that indictments were found against members of the Democratic Party in the State of Florida for alleged violation of Federal election laws. The people of Florida believed firmly then and believe firmly now, and know it, so far as moral evidence can prove the fact, that the grand jury that found those indictments was a corruptly "packed" grand jury. The attorneys defending those charged with alleged violation of the Federal election statute sought to prove in Judge Swayne's court the fact that



the Federal grand jury that found these indictments was corruptly formed; that the jury had not been drawn in accordance with the law; that the United States jury commissioners and the United States marshal, the officers of Judge Swayne's court, had filled the jury box, knowingly and corruptly, almost wholly with names of Republicans. A letter, of which the following is a copy, was exhibited by the attorneys for the defendants in Judge Swayne's court:

OFFICE OF J. R. MIZELL,  
UNITED STATES MARSHAL FOR NORTHERN DISTRICT OF FLORIDA.  
*Jacksonville, Fla., July 5, 1889.*

C. C. KIRK, Esq., *De Land, Fla.*

SIR: You will at once confer with Mr. Bielby and make out a list of 50 or 60 names of true and tried Republicans from your county registration list for jurors United States court and forward same to Hon. P. Walter, clerk United States court, and it is necessary to have them at once, as you can see. Please acknowledge this.

I am, yours, truly,

JOHN R. MIZELL,  
*United States Marshal.*

Please get the names of the parties as near steamboat and railroad station as possible.

Letters of a similar character were no doubt sent to persons in every county in Judge Swayne's district.

John R. Mizell was United States marshal in Judge Swayne's court, and the letter clearly shows that the object was to get the names not of citizens holding mixed political faiths, but of "true and tried Republicans," who would naturally look with biased eyes upon any Democrat charged with having violated Federal election laws in Florida, and especially when the violation was necessarily committed, if committed at all, against the Republican Party of that State.

The clerk of Judge Swayne's court, who was also one of the United States jury commissioners, was called to the stand, and it was sought to prove by his testimony the corrupt "packing" of the grand-jury box. John Wurts, now a professor of law at the Yale University, and at that time a practicing attorney in Jacksonville, where Judge Swayne's court was held, testified before the subcommittee with reference to the calling of the clerk of Judge Swayne's court to prove the corrupt composition of the Federal grand jury, as follows:

Q. Was he called to testify?—A. He was called as a witness, sworn, and put on the stand, and the question was asked him. The court held that the collusion between the marshal and the clerk would have to be proven, and in order to prove it they called Walter to the stand.

Mr. CLAYTON. He was the clerk.

A. (Continuing.) He was the clerk, and they put the question directly to him whether there was any understanding between him and the marshal as to the selection of these 50 true and tried Republicans, and immediately Judge Swayne interposed and forbade the witness to answer. He said that an affirmative answer would tend to criminate him, and it was not a proper question. That cut off—counsel then stated that that cut off their last line of inquiry, and last line through which they could prove the allegations of their plea, and threw up their hands.

Judge Swayne thus cut off all hope of proving the corrupt character of that Federal grand jury that had found indictments against certain Democrats in the State of Florida. This attempt on the part of attorneys to prove the corrupt constitution of the grand jury was made by pleas in abatement to said indictments.



It was this act of Judge Swayne, committed in the very beginning of his judicial career in Florida, that caused the people of Florida to look upon him with suspicion and with contempt. But about this very same time Judge Swayne was using the cars of railroad corporations in the State of Florida for the money gain of himself and family. And these corrupt acts, as well as his corrupt allowances to masters in chancery in his court, were the basis of the legislative resolutions in 1893, denouncing Judge Swayne for corrupt conduct. The legislative resolution denouncing him, passed by the Legislature of the State of Florida in 1903, was based upon his corrupt acts since the adoption of the resolutions in 1893.

A sovereign State of this Union has twice, formally, by legislative resolutions, denounced Judge Swayne for corrupt, official conduct. And on the floor of this House and before the subcommittee and in the press of the country, it has been sought to excuse him because he is a Republican, and because they who prefer the charges against him from the State of Florida are Democrats. Will the House of Representatives accept such an excuse and such a plea? That is the question before this House to-day.

Something has been said in this discussion about an interview with me published in an Atlanta, Ga., and a Jacksonville, Fla., newspaper, relative to Judge Swayne. I here incorporate a colloquy in this House between the gentleman from Maine [Mr. Littlefield] and myself as explanatory of that interview:

MR. LITTLEFIELD. Now, before I reach a discussion of the articles pending. I want to call the attention of this House to one thing. I understand that the gentleman from Florida [Mr. Lamar] is in the House. I desire at the very beginning of this discussion to give the gentleman from Florida [Mr. Lamar] the opportunity, which I have no doubt he will gladly court, of repudiating an alleged interview said to have been given by him during the pendency of this case, which in my judgment does great violence to his reputation as a gentleman and as honorable Member of the House. I desire to clear the atmosphere in connection with this discussion.

I hold in my hand a copy of the Metropolis, printed in Jacksonville, Fla., of March 29, 1904, and this is the interview which I desire to give my friend opportunity to repudiate. And first, I may say further, that I was extremely well impressed with the very handsome and able and eloquent appearance presented by him when he introduced these articles originally, and for that additional reason I desire to give him this opportunity of straightening out this question in connection with this interview. The interview reads as follows:

"Congressman Lamar, according to the Atlanta Constitution of yesterday, says the people of Florida have stood Judge Swayne just about as long as they can. And he is not going to hesitate to tell Congress, he says, if some action is not taken giving the people of his State relief, he is satisfied from prevailing conditions that Judge Swayne's life will be in danger. 'I am going to tell them the story of Gesler and William Tell, and point to the scene in that solitary bathroom in Paris where Charlotte Corday found her victim.'"

Now, I will be very glad, of course—I can not insist upon it—to give my distinguished friend an opportunity now to repudiate that interview, and I hope he will be able to do so.

MR. LAMAR of Florida. Mr. Speaker, I will say this, that I will be as frank in answering as the gentleman has been in asking. In Atlanta last spring, Mr. Speaker, during an interview—it might be called casual, because I was introduced to the reporter for the first time—a conversation occurred relative to Judge Swayne. In that conversation, Mr. Speaker, either upon his request or upon my own voluntary statement, I do not know which, nor do I think it is material, I cited somewhat the conditions in Florida in relation to this impeachment and relating to Judge Swayne. So far as any language quoted by the reporter imputes to me, Mr. Speaker, any statement that Judge Swayne's life was in any danger, it is absolutely incorrect. I am not in the habit of repudiating a newspaper interview. As a general rule they are correct.

What I said to that reporter was this, that if these proceedings in the House, after full inquiry, culminated in nothing, then it would be because, in my opinion, the House of Representatives did not understand the conditions in Florida and Judge Swayne's relations to that people as I understand them; that I looked upon him as utterly corrupt and utterly tyrannical, the most lawless man in the State of Florida. And I said further, that from my place in the House of Representatives, not from that hotel in which I was then speaking—that being substantially the only mistake the reporter made, limiting the conversation to what I intended to say, as being made at that particular time, and the further mistake that I considered Judge Swayne's life was in danger—except as to these two mistakes. I stated—and I repeat it upon this floor and I intended to repeat it in my speech upon the merits of this case—that if nothing appealed to Judge Swayne, neither law nor humanity, in his own lawless career, then I would point out to him the fact that because of his arbitrary and tyrannical acts there might result from some ill-ordered or some vengeful brain, who had suffered at his hands, some personal violence to him. And I shall repeat that statement, and I repeat it here, if that is what the gentleman wants to know with a view to criticizing me.

Mr. LITTLEFIELD. I desire——

Mr. LAMAR of Florida. Let me complete my statement.

Mr. LITTLEFIELD. Certainly.

Mr. LAMAR of Florida. I have no objection to any fair criticism of that language, but consider it as delivered from my place in the presence of the House of Representatives. And I point to the conclusion of the report of a majority of the Judiciary Committee of this House upon Judge Swayne's conduct in Florida, and this is the language in which they close it:

"It is vitally necessary to maintain the confidence of the people in the judiciary. A weak executive or an inefficient or even dishonest legislative branch may exist, for a time at least, without serious injury to the perpetuity of our free institutions, but if the people lose faith in the judicial branch, if they become convinced that justice can not be had at the hands of the judges——"

Now, mark this language. I do not intend to speak disrespectfully to the gentlemen, but I say to him, mark this language—"the next step will be to take the administration of the law into their own hands and do justice according to the rule of the mob, which is anarchy, with which freedom can not coexist."

Also, I repeat that language; I repeat it in parallel columns with my own, and I can not say any more in my remarks than is there said by high Members of this House; and I reassert my language from this place.

Mr. LITTLEFIELD. I beg the gentleman's pardon. Do I understand him to say that the interview that I have quoted is his language?

Mr. LAMAR of Florida. I have stated to you what I said in the interview.

Mr. PALMER. Well.

Mr. LITTLEFIELD. Well.

Mr. PALMER. He does not have to be cross-examined.

Mr. LITTLEFIELD. Do you have any interest in this controversy? Have you entire charge of this transaction?

Mr. PALMER. Not any more than you have.

Mr. LITTLEFIELD. Have you entire charge of this transaction?

Mr. PALMER. Not the slightest, and I do not care one bawbee what becomes of it.

Mr. LITTLEFIELD. You do not care a bawbee? That is shown by the way that you have taken charge of the entire case. I do not care to press the gentleman if it is not agreeable for me to ask him concerning this suggestion.

Mr. LAMAR of Florida. It is entirely agreeable to me for you to interrogate me.

Mr. LITTLEFIELD. Then I will ask, in substance, did you give this interview?

"I am going to tell them the story of Gessler and William Tell, and point to the scene in that solitary bathroom in Paris where Charlotte Corday found her victim."

I understand you to say that you did?

Mr. LAMAR of Florida. I reiterate that language; I used it.

Mr. LITTLEFIELD. You reiterate that language.

Mr. LAMAR of Florida. Let me reiterate it, and give it in my own way, and not in yours.

Mr. LITTLEFIELD. Let me go a little further.

Mr. LAMAR of Florida. You asked me a question; let me answer.

Mr. LITTLEFIELD. Certainly.

Mr. LAMAR of Florida. I say this here. It almost looks like reducing the question from the sublime to the ridiculous, in such a proceeding as this, to allude to a celebrated proceeding that happened once in the Virginia House of Burgesses. I used that language, as reported, pointing out that Charles Swayne was the most lawless man in the State of Florida; that in the whole world it has occurred to men in all stations of life—official as well as unofficial—to meet, in the course of a tyrannical career, some rebuke. If it did not come from constituted authorities, it came from some ill-regulated mind, or some man that was carried away with the passion of a victim of oppression, and that such a man met the fate of tyrants; and I submit it to this House that this language is not capable of being misconstrued by anyone here. I deny that there is any suggestion of violence to Judge Swayne about that, and the very fact that he has lived in that State so long in his lawless career is a refutation of the suggestion that he is in any danger in the State of Florida. He is as safe in that State as he would be in the State of Maine.

And yet, sir, we are the victims of his unjudicial career and you are not. And if I wanted to couple a large matter with a small one—small by comparison, large as I deem this matter to be—I would say, varying the language, as Mr. Henry said:

“Cæsar had his Brutus; Charles the First his Cromwell;”

And should some one venture to suggest that it is treason, I would say:

“And Charles Swayne may profit by their example.”

Now, sir, if I wished to descend from the grand and the sublime to the ridiculous, for it is almost that to couple these two remarks and these two proceedings, I could say that. I will say that there was never anything in my mind to suggest any violence to Judge Swayne. It is foreign to my nature; it is foreign to my State; and in proof of that I point to the fact that he has lived secure in that State, with perfect immunity, for many years, despite the fact that this House has made, as a basis in part of his impeachment, his cruel, his outrageous, and his vindictive treatment of the citizens of Florida. I hope that will satisfy the gentleman. [Applause on the Democratic side.]

Mr. LITTLEFIELD. I say it satisfies me; but I will go further and say that it grieves me, and I profoundly regret that a Member of the House treats the incitement to assassination and murder in the public prints as a trivial proposition and justifies it upon this floor. I say I profoundly regret it. I shall not characterize it, I shall not go so far as to suggest even that it may indicate—

Mr. ROBINSON of Arkansas. Will the gentleman yield for a question?

Mr. LITTLEFIELD. Yes.

Mr. ROBINSON of Arkansas. Do you assert, in view of the statement made by the gentleman from Florida [Mr. Lamar], that he justifies assassination? Do you make that statement?

Mr. LITTLEFIELD. I say this: We all understand the English language, and I suppose the people of Florida, for whose benefit I infer this interview was given and published in Florida, can read the English language and understand its purport; and I protest here and now—I will tell you what I am thinking of—I protest here and now against the suggestion that any language that is put in the public print and read by the common people that urges assassination or is an incitement to murder is trivial in its character.

Mr. LAMAR of Florida. May I interrupt the gentleman a moment?

Mr. LITTLEFIELD. Yes; certainly.

Mr. LAMAR of Florida. I would think that the—

Mr. LITTLEFIELD. Let me go a little bit further. I will concede that the gentleman in his place in this House reiterates the language that means that, and then says here that he did not mean it—

Mr. LAMAR of Florida. The gentleman from Maine, I will not say intentionally, but certainly almost blindly, misapprehends what I said upon the floor of this House. What I said had no relation to the question whether crime was trivial. That was not the way in which I used the word trivial. I said it was almost trivial to compare the impeachment of Judge Swayne and the language that I used toward him, not which I used for that publication, but which I said to the reporter that I would use on the floor of this House from my place—I said that was almost trivial compared with the momentous question concerning which the other language was used.

Mr. LITTLEFIELD. Whether the comparison of the impeachment of Judge Swayne—

Mr. LAMAR of Florida. Let me finish what I am saying.

Mr. LITTLEFIELD. Yes; go ahead.

Mr. LAMAR of Florida. I say this, and I hope the gentleman will not misunderstand me. I am willing to have him take my language and debate it fairly, but in the use of my language I trust that he will not construe it, impute the meaning to it, or in any way suggest that my language was intended to encourage any violence toward Judge Swayne, because if he did—I will not impute it to the gentleman now; but I say if he did, or if any other Member on the floor of this House did—I would denounce it as a malicious falsehood, because my language was not susceptible of that construction.

Mr. LITTLEFIELD. The gentleman's denunciation disturbs nobody after the exhibition he has made. So far as that is concerned, I will simply say this, if the gentleman thinks this statement can be sustained and will receive credit with intelligent people, I will concede that when he uses this language, which he has now confirmed:

"I am going to tell you the story of Gessler and William Tell, and point to the scene in that solitary bathroom in Paris where Charlotte Corday found her victim"—

I will concede that he well says that he desires to be understood, and that I so understand him, that he did not intend to encourage assassination or to incite murder; but I will at the same time say that unfortunately for him—I am assuming that he is entirely sincere, but I will at the same time say—that the ordinary citizen of the United States, I am sorry to say, would so construe it; and it is for that reason that the language does great violence to the character of the distinguished gentleman from Florida. Now, I hope in the further discussion of this matter——

Mr. GAINES of Tennessee. Will the gentleman yield to me for a question?

Mr. LITTLEFIELD. No; I——

Mr. GAINES of Tennessee. I wanted to ask the gentleman if this matter that he has read is in the record in this case?

Mr. LITTLEFIELD. Have I said that is was?

Mr. GAINES of Tennessee. Then why does not the gentleman try it on its merits and not try to drag in a wrangle by outside parties?

Mr. LITTLEFIELD. Is the gentleman from Tennessee disturbed?

Mr. GAINES of Tennessee. I have good reason to be disturbed. The gentleman, the other day, was kicking because some Member went outside of the record.

Mr. LITTLEFIELD. There is no telling what you will reach when you bore deep enough. [Laughter.]

Mr. GAINES of Tennessee. The gentleman from Maine has charged the gentleman from Pennsylvania with bringing in unjust suspicions outside of the testimony.

Mr. LITTLEFIELD. Is the gentleman from Tennessee disturbed?

Mr. GAINES of Tennessee. I am disturbed in my confidence in the gentleman's fairmindedness. [Laughter.] I esteem the fairmindedness of the gentleman very much.

Mr. LITTLEFIELD. I appreciate the good opinion of the gentleman from Tennessee, and I hope that I may have it hereafter.

Mr. GAINES of Tennessee. The gentleman will have to improve very much. [Laughter.]

Mr. LITTLEFIELD. That furnishes, of course, for me a very high ideal to attain, but I will do the best I can. [Laughter.]

Mr. Speaker, the people of Florida expect justice at the hands of this House and they hope this House will administer justice toward Judge Swayne. That will satisfy the people of my State. If this House desires to make the judicial authority of the United States respected and loved by the people of Florida, then I say, let this House compel the judges of the United States to administer the judicial power placed in their hands with impartiality and with honor.

Judge Locke's conduct, personal and judicial, has been of this character. Let this House impeach Judge Swayne because his conduct in Florida, both personal and judicial, has been grossly partial, grossly tyrannical, and grossly corrupt.

HOUSE OF REPRESENTATIVES,  
*January 18, 1905.*

[Congressional Record, volume 39, part 1, pages 1021-1058.]

Mr. PALMER. Will the gentleman from California use some of his time now?

Mr. GILLET of California. Mr. Speaker, I yield seven minutes to the gentleman from Massachusetts [Mr. McCall].

Mr. McCALL. Mr. Speaker, I have listened to most of the very able arguments that have been made in this proceeding, and without assuming to have read the entire record I will give some impressions that I have received concerning the case. The gentleman from New York [Mr. Cockran] yesterday very eloquently presented to the House a noble ideal of a judge, an ideal that was as unattainable as it was sublime. If we were to impeach all judges who do not attain to it and impeach them at once, I do not think we should have a single judge upon the bench at the end of the week. I am not sure we want just that sort of judge, because I think it would give us the régime of an intellectual and moral monster, under whom mankind would be crucified, and we would soon long for a judge with some taint of the frailties of poor humanity upon him. I am unable to accept the contention of the gentleman from Pennsylvania, presented in the very full argument in which he introduced the resolution, before the holidays, as to the character of an impeachable offense. The gentleman—and I have since read his speech as reported—said in substance that we either commended Judge Swayne or we did not commend him. If we believed that what he had done was right, we should send him forth with our approbation, but if we did not so believe, then we should send him to the constitutional trier—to the Senate. I do not think, sir, that the process of impeachment is any such light affair. The Constitution gives to this House the power to impeach public officers for treason, felony, and other high crimes and misdemeanors. *Noscitur a sociis*. A crime is known by the company it keeps, and whether the other "high crimes and misdemeanors" must be indictable offenses per se or not, it is evident that the framers of the Constitution, in associating them with treason and felony, contemplated very grave offenses against society. Now, as to the specific charges.

Mr. WILLIAMS of Mississippi. Will the gentleman yield for a question?

Mr. McCALL. I have only seven minutes.

Mr. WILLIAMS of Mississippi. Then it is not reasonable to expect you to yield?

Mr. McCALL. I shall be very glad to submit to the gentleman's question.

Mr. WILLIAMS of Mississippi. No; I would rather not under those circumstances.

Mr. McCALL. The article based upon the false certificates of expenses, I think, was completely destroyed by the gentleman from New York [Mr. Cockran] in the argument which he made yesterday, which imparted a temporary appearance of dignity to this case, a dignity which speedily disappears the moment one looks into the record. The first charge I will consider is the railroad charge. It is alleged that this judge accepted free transportation and free sub-



sistence while being transported, from the receiver of a railroad, which receiver had been appointed by him. The gentleman from Maine [Mr. Littlefield] estimates the cost to the railroad at \$20 or \$30, or some similar small amount. It seems to me that this charge should be revered, if for no other reason than because of its antiquity. This offense occurred some dozen years ago, at a time when I think it was quite the custom for public officers to receive what are euphemistically called "favors" at the hands of railroad corporations. I am willing to assert, however, that if the rule were applied, even in these virtuous times, that a public officer having authority either to make or execute laws against railroad corporations should be adjudged as having committed a high crime and misdemeanor because he accepted a favor from a railroad, then that rule would cause an amount of mortality among our contemporary statesmen which it is frightful to contemplate. [Laughter and applause.]

The exhuming of this indiscreet act of Judge Swayne after the dust of a dozen years has gathered upon it, this act which I believe was a thoughtless act, but which it is not alleged caused any injury to anyone or corrupted him in any way—I say that the exhuming of this offense at this late day is not so much a witness for his impeachment as it is to the diligence of the hostility with which he had been pursued.

Now, as to the contempt charges and his action in the contempt cases. It appears that he had been negotiating for the purchase of a piece of land in Florida for his wife. A deed was sent to him or tendered him for that land. He noticed that it was a quitclaim deed instead of a warranty, and he asked the question: Why is not this a warranty deed? They then told him that it was because of a cloud in the title which was being tried in his court, and he at once ordered the deed to be returned, and the transaction, so far as he was concerned, was terminated and was never taken up again. A motion was made that he should "recuse" himself on the ground that he had an interest in the land. As a matter of fact, he could not declare that he had the remotest interest in it. He decided that question presented to him judicially on the ground that he did not have an interest in the land and could not recuse himself, and it can not be doubted that he decided it in accordance with the fact.

The SPEAKER. The time of the gentleman from Massachusetts [Mr. McCall] has expired.

Mr. GILLET of California. I yield three minutes more to the gentleman from Massachusetts [Mr. McCall].

Mr. McCALL. The lawyers who made the motion then brought suit against him, as if he were the owner of the land or claimed title to it. They caused a publication to be made in a newspaper. The evident purpose of the whole proceeding was to coerce the judge, when the matter was called up again, into recusing himself. I regard that, Mr. Speaker, as a very grave contempt, and I do not believe that it can receive the approbation of the Florida bar.

A poor man may be in court with the title to his home in controversy, and if a great and rich antagonist is to be permitted to coerce the court, to bring a groundless suit against the judge and to publish defamatory articles against him, then justice will become a mere byword. In the other offense case an attempt was made to assassinate an officer

of the court because of the way he attempted to perform an official duty. These offenses were not committed against Charles Swayne, but they were committed against the very majesty of the law, and if such offenses were permitted to go unpunished they would paralyze the arm of justice.

We have heard very eloquent declamations here about liberty, a name that is always sweet to our ears. Those declamations are made because these offenders were sent to jail. But the kind of liberty, sir, that this Government stands for is liberty under law. The kind of liberty that is declaimed about here is liberty to the assassins of the law. If our courts shall not enforce their processes, shall not protect their officers from assassination, and shall not protect themselves from insult, then the liberty for which this Government stands will cease to exist, and with the falling of that the Government itself will fall, and it ought to fall.

I have no difficulty, sir, in reaching the conclusion that I shall vote against all these articles of impeachment. As to the House being put in a false position, I will say that I do not think that it should pursue an evil course simply because it has once started upon it. We were hurried into the passing of the resolution some three or four weeks ago under the spur of the previous question; and if we decide to prosecute this case no longer we can still retire with dignity; we can send a resolution to the Senate that after further consideration we have decided to prosecute the case no further, and that the charge which we have presented can not be maintained by the evidence into which we have investigated. [Applause.]

Mr. COCKRAN of New York. Will the gentleman allow me a question?

Mr. GILLET of California. I am not inclined to yield any more time to the gentleman from New York [Mr. Cockran].

Mr. PALMER. I will yield to the gentleman from New York [Mr. Cockran].

The SPEAKER. How much time does the gentleman from Pennsylvania [Mr. Palmer] yield?

Mr. PALMER. I yield a minute in which to ask a question and a minute in which to answer it.

Mr. COCKRAN of New York. I understood the gentleman from Massachusetts [Mr. McCall] to say that he did not approve of the conduct of Judge Swayne in using personal property that was in his possession for the benefit of the creditors, but that the offense was so general that if we pursued it here it might become a little awkward for ourselves.

Mr. McCALL. The gentleman does not quite state my position correctly. I do not approve the action of Judge Swayne in accepting such a favor from a railroad corporation over which he had jurisdiction, but I think it altogether too trivial and too ancient for us to-day to declare it a high crime and misdemeanor.

Mr. COCKRAN of New York. I wanted to suggest to the gentleman from Massachusetts that the impression on my mind was that the act itself being reprehensible we ought not to pursue it because it was general. I want to suggest to the gentleman whether the universality of that thing ought not to be the best reason for attempting to correct it, one to be prosecuted on the first conspicuous example that came to our notice.

Mr. PALMER. I yield three minutes to the gentleman from Mississippi [Mr. Williams].

Mr. WILLIAMS of Mississippi. Mr. Speaker, in that three minutes I want to say just one thing. I always listen with very much pleasure to any argument made by the gentleman from Massachusetts. He is always evidently so sincere and so thoroughly possessed of intellectual integrity that every word he utters goes a long way with me. The fallacy of the gentleman's argument a moment ago, however, consists in this: That he places upon the same ground exactly an impeachable offense committed by an executive or legislative officer and one committed by a nonjudicial officer. He forgets that while there is but one clause of the Constitution that applies to executive and other officers nonjudicial, there are two that apply to the judiciary. The ordinary constitutional provision for impeachment is applicable to both, and comprehends "treasons, felonies, and other high crimes and misdemeanors." There is another clause of the Constitution which refers to the removal by impeachment of judicial officers. When you come to the consideration of the impeachment of a judicial officer, there is another clause of the Constitution equally applicable, and that is the clause which fixes the tenure by which he holds his office. The judges shall hold their office "during good behavior;" eo converso—they shall not hold their office after bad behavior as judges. Impeachment is the method of determining as to them not only their guilt or innocence of "treason, felony, or other high crimes or misdemeanor," but whether their behavior as judges is good. A judge is impeachable therefore for bad behavior as a judge, because that is a noncompliance with the constitutional condition of his tenure, and he stands in a two-fold attitude to the Constitution so far as relationship to impeachment proceedings is concerned. I merely wanted to express that thought.

Mr. PALMER. I yield 30 minutes to the gentleman from Texas.

Mr. HENRY of Texas. Mr. Speaker, this interesting and memorable proceeding will soon be terminated. In view of the able and exhaustive addresses that have been delivered I can not hope to interest my auditors, but I shall at least endeavor to be just in discussing the propositions involved. So thorough has been the discussion on the law and evidence, a barren harvest is left for me to glean. Three points, however, shall receive my attention during the brief time allotted me. It is regrettable that the distinguished gentleman from Ohio [Mr. Grosvenor] on yesterday undertook to drag partisan politics into these solemn proceedings. This impeachment trial, above all others, should be tried according to law and evidence. Partisan debate should be deplored by all Members respecting their oaths of office when grave matters like these are to be determined. There was an intimation of prejudice on the part of gentlemen over there. Surely on a great question like this we can divest ourselves of feelings of partiality and prejudice. For the judiciary of my country I have the profoundest regard. The office is exalted and should ever command the highest respect of every citizen. In the formation of our Government there was much diversity of opinion about the tenure of office, but it was fixed during "good behavior" by the provisions of the Constitution. When that "good behavior" required of a Federal judge ceases he should be removed from office, no matter whether he resides North or South in this Republic.

Debate it as we may, there is only one remedy for removing an unfit Federal judge—impeachment before the Senate on charges preferred by this body as representatives of the people. Mr. Jeffer-

son always dreaded the encroachments and powers of Federal judges, and warned the people to jealously guard their acts and hold them to strict accountability. He deplored life tenure of office and eloquently declared against it. He foresaw the tardy movement of impeachment and denounced that remedy as the mere "scarecrow of the Constitution." Still, the Constitution remains unamended. We have Federal judges in office for practically life tenure, and impeachment is the only remedy for their removal when they misbehave.

With the system we must for the present be content, but let us hold the judges to strict accountability for their good behavior. I do not believe the power of impeachment the mere "scarecrow of the Constitution" where a judge has so flagrantly misbehaved as proved against Judge Swayne. This House will rise to the occasion, shut its eyes to pleas of sectionalism, and relieve the good people of Florida of a judicial tyrant who has ground some of her best citizens to the earth.

It is not necessary or usual, Mr. Speaker, for a Federal judge to become odious before the people of his district or State because, forsooth, his politics do not accord with theirs. His legitimate functions are to mete out law, justice, and equity, not politics.

In my State we have four Federal district judges, one a Democrat, the other three lifelong Republicans. These men are respected by the bar and people of Texas. It gives me pleasure to testify here now before this assemblage that no stain of dishonor has ever attached to their names. They stand high up in the judicial ranks in Texas and throughout the country where they are known, and I to-day congratulate my people on their ability, eminence, and honorable judicial conduct. One, hailing from the great State of Iowa, had only been in the confines of Texas a brief period when the lamented McKinley elevated him to the bench, and so good was his behavior that he at once sprang into popularity with the legal profession and the people of Texas. The same estimate may be placed upon the Democrat and the other two Republicans, who have lived honorable careers in Texas for many years. An upright judiciary is surely one of the greatest blessings to be enjoyed by a free people. Bacon wisely said:

The place of justice is an hallowed place; and therefore not only the bench, but the foot place and precincts and purprise thereof, ought to be preserved against scandal and corruption.

When it ceases to be such a refuge, the people suffer.

In the enthusiasm on yesterday we drifted somewhat from the law and facts. Let us cast aside prejudice, repudiate blind partisanship, and try this case as become representatives of free people in a great Republic. This cause should not be tried here as it will be in the Senate. There proof of guilt must be made beyond reasonable doubt. Here it must only be such as induces a rational belief of the guilt of the accused. Such is the rule of law as laid down by accepted authorities.

More than 10 years ago, by a unanimous vote, the Florida Legislature, in August, 1893, passed a resolution denouncing Judge Swayne as a "corrupt judge" and one "susceptible to corrupt influences," and memorialized Congress to investigate his conduct with a view to impeachment. In the short period of three years as a judge he had



so demeaned himself in Florida that all the State senators and representatives concurred in denouncing him as being "corrupt" and "subject to corrupt influences." But the power of impeachment is tremendous, and moves with halting step. It was not inaugurated, but permitted to sleep here before some committee. After more than 10 years have elapsed the long-suffering people of that State again appeal to this body for investigation and impeachment. Your Judiciary Committee have given the complaint thorough investigation, and report unanimously against Judge Swayne. The hearing was not ex parte; it was complete and fair, and the respondent had process at the expense of the Government to bring his witnesses here for his defense. The Committee on the Judiciary have set forth impeachable grounds in 12 specifications, and it is to be regretted, in my judgment, that they did not include one more. The evidence contained in this record undeniably shows that Judge Swayne could fairly be impeached for his conduct in the Hoskins bankruptcy proceedings. In my discussion to-day I shall confine myself to three propositions, to wit, the question of nonresidence, the contempt proceedings against Belden and Davis, and the contempt proceedings against W. C. O'Neal.

The specifications as to nonresidence read as follows:

ART. 6. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress approved on the 23d day of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine and contiguous territory were transferred to the southern district of Florida, whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida and to comply with the five hundred and fifty-first section of the Revised Statutes of the United States, which provides that "a district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor."

Nevertheless the said Charles Swayne, judge as aforesaid, did not acquire a residence, and did not, within the intent and meaning of said act, reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of October, A. D. 1900, a period of about six years.

Wherefore the said Charles Swayne, judge, as aforesaid, willfully and knowingly violated the aforesaid law and was and is guilty of a high misdemeanor in office.

ART. 7. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned a district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district; that subsequently, by an act of Congress of the United States, approved the 23d day of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine, with the contiguous territory, was transferred to the southern district of Florida, whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida, as defined by said act of Congress, and to comply with section 551 of the Revised Statutes of the United States, which provides that "a district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor."

Nevertheless the said Charles Swayne, judge as aforesaid, totally disregarding his duty as aforesaid, did not acquire a residence, and within the intent and meaning of



said act did not reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of January, A. D. 1903, a period of about nine years.

Wherefore, the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

As is well remembered, Judge Swayne lived at St. Augustine, Fla., when the lines of his district were changed in the year 1894, and he lived outside of the northern district of Florida, for which district he had been appointed to act as judge, until very recently, when charges against him originated. Under an express statute recited in these specifications it became his duty to remove into his district and reside therein while judge. But, mark you, he did not wish to remove and did not intend to remove, and he did not remove his residence into the northern district of Florida until within the last year, since impeachment proceedings were inaugurated against him. In his statement before the Judiciary Committee he said: "After a consultation with my friends in Jacksonville and vicinity they urged me not to move my furniture nor my family, saying that the next Congress would be Republican and the district would be placed back in its usual form." This solemn admission before the committee evidences the complete intent on his part to remain out of the northern district of Florida, and it sheds light on the true inwardness of his feelings and desires, and by this declaration his subsequent acts must be construed.

The district was never changed by Congress after 1904, as he and his friends believed and prophesied would be the case. His family never removed into the district, but remained in the State of Delaware. Permit me to submit here the evidence of witnesses on the question of residence. It proves conclusively that the intentions and acts of Judge Swayne were a violation of the statute quoted. Where such a statute has been violated there is no legal excuse that can be pleaded by the judge. He is guilty of a high misdemeanor and should be removed from office. C. H. Laney, an attorney in the State of Florida, testified that he had made trips to Guyencourt, Del., and that he found out while there that Judge Swayne periodically visited there and spent almost his entire summers there. He swore that Judge Swayne had nominally a home there, a furnished house, and that he has a place there called his place, at which he stays. The place, he testifies, is at Guyencourt, Del., a small hamlet, with a railroad station and post office, about 8 miles north of Wilmington.

On the question of inconvenience to litigants, Judge W. A. Blount testified that "Judge Swayne's absence from the district had resulted in inconvenience, and that the question as to whether it had resulted in detriment would depend upon whether matters could be decided as well upon written as upon oral argument, and whether certain matters ought to be decided *ex parte* instead of *inter partes*." C. M. Coston, an attorney of Florida, swore that "the length of time in each year which Judge Swayne spent in the district consisted of the time which it required him to go there, hold his term of court, and go away, usually from two to five weeks."

Judge A. C. Blount, jr., testified that he had learned from Judge Swayne and others that the Judge had a home at Guyencourt, Del. He swore that he and Judge Swayne had been on pretty friendly terms and that he sometimes held conversations with the judge,

during the course of which the judge had spoken of his place at Guyencourt, Del., his horses, etc.

J. C. Keyser testified that "Judge Swayne was never in Pensacola, Fla., except during terms of his court, shortly before and shortly after, and that he boarded while he was there."

W. H. Northrup testified that "Judge Swayne stopped at his house during the time he was holding court in Pensacola and that he had heard Judge Swayne speak of his old homestead at Guyencourt, Del." He also testified that "he had heard Judge Swayne say that he would come to Florida, but he had never heard him say that he intended making his home there."

George P. Wentworth testified "that Judge Swayne occupied the Simmons residence, and that his family came to Florida while court was being held and then went back to his place at Guyencourt, Del."

J. E. Wolfe, who had been United States district attorney and assistant United States district attorney, swore that "it was generally understood that Judge Swayne had a home in Guyencourt, Del., where he resided when he was not required to be in Florida at terms of court, and that when court adjourned he would go away." He testified that "Judge Swayne rented a residence for a few months, and that he boarded for some time with Capt. Northrup, in Pensacola." He swore that "Judge Swayne would usually arrive a day or two before court met, remain until the business of the court was disposed of, and go away," and that "the Judge usually held three terms of court in the district per annum, each term of from 10 days to 2 weeks' duration."

Judge Swayne testified that he had not been a registered voter in 14 years, and that he had not paid his poll tax in Florida or qualified himself to vote. Out of 365 days in each year for the last 10 years he has spent in all only about 60 days in his district while actually holding court. He has maintained his family in Delaware. The only evidence tending to show that he attempted in the slightest degree to obtain a residence in the northern district of Florida is some excuse offered by his clerk, Mr. Marsh, and his friend, Capt. Northrup, claiming that he was trying to secure a home in the district on one or two occasions for the purpose of bringing his family there. Both of these witnesses state that he never secured the home.

More than 10 years ago the people of Florida, through their legislature, denounced him as being a corrupt judge and susceptible to corrupt influences. He has never forgiven the legislature or the people of that State for their action. He has lorded it over them and has been determined to show these people that he would not reside amongst them permanently and obey the mandates of the statute requiring him to reside in his district. His acts have been the very plainest violation of the statute, and on all occasions he has manifested his contempt and scorn for the people of that State.

For my part, I have no doubt that Judge Swayne never intended to remove into the new district as fixed by the act of Congress in 1894, and the evidence will convince any fair-minded man who will read it that he has never actually acquired a residence there until the Florida legislature forced him to do so by beginning these proceedings. There should be no hesitancy on the part of any Member of Congress to remove him from office on these specifications. The day of reckoning

said act did not reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of January, A. D. 1903, a period of about nine years.

Wherefore, the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

As is well remembered, Judge Swayne lived at St. Augustine, Fla., when the lines of his district were changed in the year 1894, and he lived outside of the northern district of Florida, for which district he had been appointed to act as judge, until very recently, when charges against him originated. Under an express statute recited in these specifications it became his duty to remove into his district and reside therein while judge. But, mark you, he did not wish to remove and did not intend to remove, and he did not remove his residence into the northern district of Florida until within the last year, since impeachment proceedings were inaugurated against him. In his statement before the Judiciary Committee he said: "After a consultation with my friends in Jacksonville and vicinity they urged me not to move my furniture nor my family, saying that the next Congress would be Republican and the district would be placed back in its usual form." This solemn admission before the committee evidences the complete intent on his part to remain out of the northern district of Florida, and it sheds light on the true inwardness of his feelings and desires, and by this declaration his subsequent acts must be construed.

The district was never changed by Congress after 1904, as he and his friends believed and prophesied would be the case. His family never removed into the district, but remained in the State of Delaware. Permit me to submit here the evidence of witnesses on the question of residence. It proves conclusively that the intentions and acts of Judge Swayne were a violation of the statute quoted. Where such a statute has been violated there is no legal excuse that can be pleaded by the judge. He is guilty of a high misdemeanor and should be removed from office. C. H. Laney, an attorney in the State of Florida, testified that he had made trips to Guyencourt, Del., and that he found out while there that Judge Swayne periodically visited there and spent almost his entire summers there. He swore that Judge Swayne had nominally a home there, a furnished house, and that he has a place there called his place, at which he stays. The place, he testifies, is at Guyencourt, Del., a small hamlet, with a railroad station and post office, about 8 miles north of Wilmington.

On the question of inconvenience to litigants, Judge W. A. Blount testified that "Judge Swayne's absence from the district had resulted in inconvenience, and that the question as to whether it had resulted in detriment would depend upon whether matters could be decided as well upon written as upon oral argument, and whether certain matters ought to be decided *ex parte* instead of *inter partes*." C. M. Coston, an attorney of Florida, swore that "the length of time in each year which Judge Swayne spent in the district consisted of the time which it required him to go there, hold his term of court, and go away, usually from two to five weeks."

Judge A. C. Blount, jr., testified that he had learned from Judge Swayne and others that the Judge had a home at Guyencourt, Del. He swore that he and Judge Swayne had been on pretty friendly terms and that he sometimes held conversations with the judge,

during the course of which the judge had spoken of his place at Guyencourt, Del., his horses, etc.

J. C. Keyser testified that "Judge Swayne was never in Pensacola, Fla., except during terms of his court, shortly before and shortly after, and that he boarded while he was there."

W. H. Northrup testified that "Judge Swayne stopped at his house during the time he was holding court in Pensacola and that he had heard Judge Swayne speak of his old homestead at Guyencourt, Del." He also testified that "he had heard Judge Swayne say that he would come to Florida, but he had never heard him say that he intended making his home there."

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Judge Swayne testified that he had not been a registered voter in 14 years, and that he had not paid his poll tax in Florida or qualified himself to vote. Out of 365 days in each year for the last 10 years he has spent in all only about 60 days in his district while actually holding court. He has maintained his family in Delaware. The only evidence tending to show that he attempted in the slightest degree to obtain a residence in the northern district of Florida is some excuse offered by his clerk, Mr. Marsh, and his friend, Capt. Northrup, claiming that he was trying to secure a home in the district on one or two occasions for the purpose of bringing his family there. Both of these witnesses state that he never secured the home.

More than 10 years ago the people of Florida, through their legislature, denounced him as being a corrupt judge and susceptible to corrupt influences. He has never forgiven the legislature or the people of that State for their action. He has lorded it over them and has been determined to show these people that he would not reside amongst them permanently and obey the mandates of the statute requiring him to reside in his district. His acts have been the very plainest violation of the statute, and on all occasions he has manifested his contempt and scorn for the people of that State.

For my part, I have no doubt that Judge Swayne never intended to remove into the new district as fixed by the act of Congress in 1894, and the evidence will convince any fair-minded man who will read it that he has never actually acquired a residence there until the Florida legislature forced him to do so by beginning these proceedings. There should be no hesitancy on the part of any Member of Congress to remove him from office on these specifications. The day of reckoning



for this judge has come. He has defied the people and their laws long enough. For my part, I shall not shut my eyes to his flagrant violation of the plain statute, but when the hour comes shall pronounce judgment against him on this specification and send him to the high court of impeachment, where the Senate will strip the judicial ermine from him and place it upon worthy shoulders of an honorable successor.

The next points claiming my attention will be the Davis and Belden and O'Neal contempt cases. Those specifications read as follows:

ART. 8. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge, as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 9. That the said Charles Swayne having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 10. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore, the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 11. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a circuit judge of the United States court heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

The points involved in the Davis and Belden cases are substantially these: On the 15th day of February, 1901, a suit was instituted in Judge Swayne's court, in the northern district of Florida, by



Florida McGuire and others against The Pensacola City Co. through her attorneys, Simeon Belden and Louis Paquet. The case was not tried at the spring term of court.

On the 19th day of October, 1901, Mr. Belden and his cocounsel, Mr. Paquet, presumably from the city of New Orleans, addressed a letter to Judge Swayne, at Guyencourt, Del., asking the judge to recuse himself in the above-entitled case on the ground of his personal interest in the litigated land. To this letter Judge Swayne made no reply. He came to Pensacola and opened his court on the 5th day of November, 1901. It has been contended on the other side of this House that Judge Swayne announced in open court on November 5, 1901, in the presence of the attorneys, Belden, Davis, and Paquet, that his "relative" had purchased block 91 of the land involved in this suit, and that he, learning of the litigation pertaining to block 91, had returned the deed. They have said that he made a general statement in the presence of Davis and Belden on November 5, 1901. Judge Swayne has not said anywhere, nor is there any legitimate testimony in this record, that such a statement was made by him in the presence of Belden and Davis prior to November 11, 1901, after Davis had dismissed in his court the case of Florida McGuire v. The Pensacola City Co. Indeed, on November 5, 1901, Davis had not been engaged or employed in the case. Let me here submit Judge Swayne's testimony on this point, and the only statement touching it ever made by him:

On November 5, 1901, while engaged in the trial of a criminal case, counsel for plaintiff in the case of Florida McGuire came into court, and I immediately suspended proceedings and called them up and explained to them the situation as above detailed, and notified them that their letter was not in such form as to be the foundation of a formal order, but that I would not recuse myself as requested. I made my explanation clear and emphatic, and I am certain that they could not mistake or misunderstand the statements of fact that I then made.

He only states that "counsel for plaintiff in the Florida McGuire case came into court," and does not say that Belden or Davis came into court. What counsel? It could only have been Paquet, of New Orleans, because Davis was not then an attorney in the case, and Belden was sick with facial paralysis in his hotel at Pensacola, Fla., according to all the evidence. Hence, Davis and Belden did not hear this statement when he made it, because they were not in court, according to any testimony in this record. There is no legitimate testimony anywhere authorizing the inference that Davis ever was in the Florida McGuire case until the morning of the 11th day of November, 1901, when he was counsel only by courtesy to dismiss the case at the instance of Mr. Paquet and Mr. Belden. Hence, Judge Swayne's offense against Davis was vastly more grievous than the one against Mr. Belden, although it was enormous against that venerable attorney.

The contempt proceedings were instituted on the 11th day of November, and Davis never came into the case until that morning, although it is undeniably true that Judge Swayne was sued by Davis and others on Saturday evening, about 8 o'clock, November 9, immediately preceding the Monday when the contempt rule was entered. Before Davis ever came into the case Belden and Paquet, of the city of New Orleans, had requested Judge Swayne to recuse himself on the trial of the case and had offended his imagined dignity. He had

declined to recuse himself and had stated that a "relative" had purchased a part of the land. This was on November 5. He did not have the honesty to state on that day, when refusing to recuse himself, that the so-called "relative" was his wife. An honorable judge should have instantly stated the facts to all the counsel in the case. Judge Swayne contends that he did not object to being sued by these attorneys, for they had a right to sue him. Still, the charge against the attorneys as drawn by Mr. Blount was solely for the fact that they had brought suit against Judge Swayne. Here is the gravamen of the charges against Belden and Davis:

To show cause before this court at a day and hour to be fixed by the court why they shall not be punished for contempt of the court, in causing and procuring as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and the Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91 in the Chevaux tract, in the city of Pensacola, Fla., a tract of land involved in controversy in ejectment then depending in this court in a case wherein the said Florida McGuire was plaintiff and The Pensacola City Co. et al. were defendants.

Belden, Davis, and Paquet had the right to believe that there was some transaction going on between the real estate firm of T. C. Watson & Co. It can not be denied that suit was then pending, or that judgment had already been rendered in favor of T. C. Watson & Co. against C. H. Edgar to recover commissions for the sale of the land to Judge Swayne or his wife prior to November 5, 1901. Whether this suit had been brought to judgment or not is immaterial.

J. C. Keyser testified, in giving his estimate of the value of the land and in response to other interrogatories, that "I gained from the fact that there is a judgment in Judge McCullough's court for commissions of \$70—5 per cent on \$1,400—and \$8 abstract fee against Charles H. Edgar and in favor of Watson & Co., lot No. 91, to Mrs. Lydia C. Swayne." He further testified that the value of the land was about twice \$1,400. Belden and Paquet knew of this suit or judgment. It was freely rumored in Pensacola that Judge Swayne had bought lot 91, a part of the land in controversy before him in the McGuire case, Mr. Belden testified. His testimony is as follows:

The Florida McGuire case against Blount et al. was instituted early in the year, but was not ready for trial at the spring term. During the summer of 1902 the rumor was general through the town that Judge Swayne had purchased lot 91 of the De Rivas tract, which was in litigation before him as judge of the circuit court here. The rumors were so definite and of such form as to leave no doubt in the minds of counsel of the purchase. So, the 19th day of October, Judge Paquet and myself addressed a letter to Judge Swayne requesting him to recuse himself, for the reason I have just stated, being a party at interest; to recuse himself and notify Judge Pardee, so he could assign a disinterested judge at the November term. He never replied to the letter at all, and, so far as I know, never informed Judge Pardee, the circuit judge, of the circumstances surrounding himself and the case. The November term I was sick—had an attack of facial paralysis—but our clients telegraphed me to come over, though I could not appear before the court.

Later, on the 9th or 11th, he replied to our communication, in which he declined to recuse himself, and went on to state he had not purchased the land; that a relative of his had purchased the block of ground in question, and that he had got hold of the deed and returned the deed to the vender of the deed. The vender of the deed was C. H. Edgar, a party defendant in the suit in question, and he being a party defendant, made Judge Swayne a party defendant through him, as we supposed. He stated that the deed had been sent on to this relative at Guyencourt, and he returned it, as he had no interest whatever. The following day, without any reference to the case whatever, the judge called up this, and in his statement he said: "The relative

I referred to yesterday, or the day before, is my wife." He went on to say that his wife had paid for it from funds from the estate of her father in Delaware. \* \* \*

It was so positive that she had purchased it, and we also learned that a suit had been brought by Watson & Co. against Edgar for commissions due them by Edgar; the records will show it. Now, upon that we brought suit against Judge Charles Swayne; the first thing we did in the morning, before any business was transacted, was to discontinue the suit. In the meantime Judge Paquet had prepared the pleadings to eject him from that property.

Mr. Speaker, why did Judge Swayne return the deed sent to him by Watson & Co.? Was it because the land was in litigation in his court? Or was it because it was a quitclaim and not a warranty deed? Watson, the senior member of the firm selling him the land, states positively "the negotiations were not completed because Judge Swayne objected to taking any but a warranty deed. That was what he bargained for." "The negotiations were broken off because Judge Swayne objected to taking anything but a warranty deed. The deed was returned to a party in New York." Never prior to November 11, 1901, did either Judge Swayne or any member of the firm of Watson & Co. testify that he returned the deed because the land was in litigation. He planted his refusal to take this deed exclusively on the ground that it was a quitclaim, and never hinted that he returned it because the land was in litigation. He contended that he had bargained for a warranty deed, and nothing else would suit him. He cared nothing for the litigation before him and said nothing about it. Therefore it is plain that the suit for commissions against Edgar was pending, or that judgment had already been rendered, on the ground that the sale had been made to Judge Swayne when Belden and Paquet requested him to retire from the case in his court where the land was in litigation.

Mr. Belden says, in testifying: "They went to the real estate agents, and the real estate agents told them that this transaction had been made, and that a suit was pending for their commissions for selling the land from Edgar to Swayne." There is not the slightest proof that Davis was then professionally connected in any way with the case in the Federal court, or ever was until the 11th day of November, 1901, when he went into court and dismissed the McGuire case as a matter of professional courtesy to Belden and Paquet. Judge Swayne said he did not object to these gentlemen suing him, yet if they had questioned his word after he said he was not interested in it I undertake to say that he would have consigned them to prison just the same. He was inflamed solely because they justly charged that he was interested in the land. He did not propose to submit to being questioned, either directly or indirectly, by these attorneys, although it was plain that he was in the midst of a transaction for a part of the litigated land. I undertake to say that if they had offered to prove, as they could have done, that he was interested in the land, he would have spurned their offer and adjudged them guilty of contempt just the same. No matter how plain the facts might have been, if they had hinted or charged in any way that he was interested in the land, he would have adjudged them guilty of contempt. He stated several times that he did not object to being sued, yet the whole gravamen of the contempt charge is that these attorneys did sue him.

Some things are not denied. Briefly to summarize, blank mortgages and blank notes were forwarded to Judge Swayne at Guyencourt, Del., for him and his wife to execute. Some of the testimony shows that the price he was to pay for the land was but half its value. That fact was known and believed by many people in Pensacola. It was notorious that there was a suit pending for commissions, for the reason that the judge or his wife had already bought the land. Judge Swayne admitted from the bench that a "relative" of his had negotiated for the land, not disclosing, as judicial honor would require, that the "relative" was his wife. There is testimony in these proceedings from his lips that his "wife had some money which she inherited from her father's estate," and, further, that "she had paid for this land with her money." With these facts well known, the air being full of rumors, when the attorneys undertook to question the judge about it, he perched himself upon the bench and said that he had explained and would not permit the attorneys to proceed further toward recusing him.

Mr. Speaker, I say they had the right to question his jurisdiction to try this cause. They had the right to sue him in the State court, and they had the right to believe that he was interested in the land. These attorneys would have done violence to their clients if they had not undertaken to oust him from jurisdiction in this cause. They should have charged, as they did charge, that he was guilty of purchasing the land for himself or his wife while it was in litigation in his court. No matter what his alleged dignity led him to say, the facts show that deeds and mortgages were passing back and forth between him and real estate agents of Pensacola in reference to this land.

Mr. GOLDFOGLE. Mr. Speaker, I should like to get my idea clear about the act of Judge Swayne in committing Belden and Davis for contempt. Did the commitment, as made by Judge Swayne, set forth the act alleged to be a contempt of his court?

Mr. HENRY of Texas. The commitment did not. The commitment simply stated that they were guilty of a substantial contempt of his court.

Mr. GOLDFOGLE. Is that all?

Mr. HENRY of Texas. Yes; that they were guilty of a substantial contempt.

Mr. GOLDFOGLE. Are the papers in evidence upon which the contempt proceedings were predicated?

Mr. HENRY of Texas. Yes; and I am going to read from them.

Mr. GOLDFOGLE. What I would like to know is this: Whether the papers clearly indicate that the reason, or rather that the motive, that actuated Judge Swayne was the commencement of a suit against him for ejectment?

Mr. HENRY of Texas. Yes; I am going to take that up right now.

Mr. GOLDFOGLE. Or does it show any other act on the part of Belden and Davis which might be construed into a contempt of court?

Mr. HENRY of Texas. Now, I haven't a great deal of time, but will answer the gentleman's question. This is the charge against the attorneys—not the manner in which they brought the suit:

To show cause why they should not be punished for contempt of the court in causing and procuring as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment wherein Florida McGuire is plaintiff and the Hon. Charles S. Swayne



is defendant to be issued from said court and served upon the judge of this court to recover the possession of block 91, the Chevaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then pending in this court in a case wherein the said Florida McGuire was the plaintiff and the Pensacola City Co. and others were defendants.

That was the ground, that he had been sued by these attorneys, and Davis was not then in the case. He was not in Judge Swayne's court, was not connected with the litigation in the remotest degree in his court until November 11, although for bringing the suit in the State court on the Saturday preceding November 11 he is charged with contempt and imprisoned and fined \$100. There has been some contention that these gentlemen did not purge themselves of contempt. It is true the motion of Blount was not sworn to and the attorneys, Belden and Davis, who were acting under the sanction of their official oaths as officers of the court, did not swear to their answer. Judge Swayne regarded the motion of Blount as being a sufficient pleading, and he treated the answer of Belden and Davis as being a sufficient pleading in his court. Their answer did clearly purge them of contempt. As I have mentioned above, Belden was not in Judge Swayne's court on November 11 when he made his statement, neither was Davis. Judge Swayne has not said so, and there is no testimony to show that they were present. This allegation in their answer purges them of contempt:

Second. That the petition to recuse referred to in said motion they had nothing to do with before this court, nor were they present on the 5th day of November when submitted, as stated in said motion, nor present when any statement made by the judge concerning his connection with any of the property, except the statement made by said judge on November 11, after court convened and after the motion to discontinue in the case of Florida McGuire v. Pensacola City Co. et al. was made.

Third. To the second paragraph sheweth: As above stated, they heard no declaration made by the judge referred to in said paragraph.

They denied the facts upon which the contempt charge was based. They denied in this answer that they were present on November 5, as Blount had charged against them. Davis was not an attorney until November 11. Still, for bringing the suit on Saturday, November 9, before he was an attorney in any way in the McGuire case, he was adjudged to be guilty of contempt. Can anyone contend that this judge had the power to punish him when he was not acting as an officer of the court until two days after the suit in the State court was brought? So it is clear that Judge Swayne transcended his power; that he was vindictive and cruel. Because, forsooth, these attorneys believed and charged that he was interested in this land they were made the objects of his judicial wrath and vengeance.

The specification in the O'Neal case is as follows:

ART. 12. The said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of the duties of his office of judge heretofore, to wit, on the 9th day of December, A. D. 1902, at Pensacola, in the county of Escambia, in the State of Florida, did unlawfully and knowingly adjudge guilty of contempt, and did commit to prison for the period of sixty days, one W. C. O'Neal, for an alleged contempt of the district court of the United States for the northern district of Florida. Wherefore the said Charles Swayne, judge, as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

Gentlemen on the other side of this House have contended that Judge Pardee held that Judge Swayne was acting in accordance



with the law in imprisoning O'Neal. Judge Pardee made no such ruling. The circuit court of appeals simply decided that Judge Swayne had jurisdiction in contempt cases before his court, and that courts had no right to review his action by appeal on habeas corpus proceedings. In the Supreme Court of the United States O'Neal's writ of error was dismissed on the ground that a writ of error was not the proper remedy for carrying a contempt proceeding to the Supreme Court for review. In fact, there is no remedy under the law to review such tyrannical actions of a judge as in the Belden and Davis and O'Neal cases. The power to punish in such cases is peculiarly within the jurisdiction of the Federal district judge, and his action can not be reviewed on habeas corpus before the appellate court by writ of error or otherwise. The circuit court of appeals clearly decided this point in the O'Neal case. The Supreme Court adjudicated it and dismissed the writ of error brought before them by O'Neal in his case pending in that court. Following is a part of the language of the judgment dismissing the case:

And on the motion to dismiss, which was argued by counsel, in consideration whereof it is now here ordered and adjudged by this court that the writ of error in this cause be, and the same is hereby, dismissed for the want of jurisdiction.

JUNE 1, 1903.

The O'Neal case is substantially this: A. Greenhut had been appointed trustee in bankruptcy for one Scarritt Moreno. Greenhut had brought an action in the county court of Escambia County, Fla., for the purpose of having certain land, which was in the name of Moreno's wife, brought into the bankruptcy estate to relieve the land of a mortgage for \$13,000, which appeared to be a lien given the National Bank of Pensacola, and by it assigned. Greenhut was a director in the bank of which O'Neal was president; he was also an indorser on Moreno's paper in the bank for \$1,500. O'Neal was charged with contempt of Judge Swayne's court for having a difficulty with Greenhut, the trustee in bankruptcy, in which difficulty Greenhut was cut with a knife in several places by O'Neal. For engaging in this affray with Greenhut Judge Swayne contends that O'Neal was guilty of contempt of his court in assaulting the trustee in bankruptcy. O'Neal contends that the facts are as follows, and the testimony tends strongly to corroborate his contention:

That the said Greenhut had been from the organization of the American National Bank, of Pensacola, in October, 1900, a stockholder and director thereof; that while he was such stockholder and director the said bank received from the said Scarritt Moreno a certain mortgage for the sum of \$13,000 to secure certain indebtedness due or to become due by the said Moreno to the said bank; that the said transaction was an honest and bona fide transaction, and that the said Scarritt Moreno was and became indebted to the said bank in a large sum of money secured by the said mortgage; that the said Greenhut was cognizant of the whole of said transaction and knew of its bona fides and honesty, as he did of the subsequent bona fide transfer thereof to Alex McGowan, N. J. Foshee, and H. L. Covington for a large consideration paid by them to the said bank, and that the bill filed by the said Greenhut as trustee as aforesaid was filed to declare the said mortgage and transfer null and void, although the said Greenhut knew them to have been entirely honest, straight, and valid transactions.

That on the morning of the 20th of October, 1902, respondent was proceeding from his residence to his office in the said bank, in the direct and usual path pursued by him, and he saw the said Greenhut standing at the door of his said store office upon the said path of respondent, and it suddenly occurred to respondent to reproach the said Greenhut with having brought the suit mentioned in his affidavit against the said bank when he, the said Greenhut, knew, as aforesaid, that there was no foundation therefor; and thereupon the respondent stated to the said Greenhut that he wished to speak to him

as soon as he was at liberty, he then being engaged in a conversation with one A. Lischkoff.

The said Greenhut answered that respondent could speak to him then, and both he and respondent stepped to the rear of the said Greenhut's office, when the respondent reproached the said Greenhut with his attitude toward the bank of which he had been a stockholder and director, both in his refusal to pay the negotiable paper hereinbefore mentioned and in the bringing of an unfounded suit against it. The conversation, however, concerning chiefly the bringing of said suit against the said bank, hot words passed between the said respondent and said Greenhut, during which the said Greenhut said that he would "do respondent up," to which respondent answered that he did not come to have a disturbance and would not fight in his office except in self-defense, but that if he had to fight he would do so if the said Greenhut would come out upon the street.

When the respondent turned to leave the office and when he had nearly reached the door, he turned and said to the said Greenhut, "Well, you know you lied about the Moreno acceptance, for you said that you would pay it," the Moreno acceptance being the negotiable paper hereinbefore mentioned. As respondent turned, saying this, he noticed that the said Greenhut was following him, and as he said it, the said Greenhut (who was short, stout, heavily built, and apparently much more muscular than respondent) struck the respondent (who is thin and feeble) and forced him against the railing in the said office. The respondent shoved the said Greenhut a little away from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocket knife, and opened it in order to protect himself, and upon said Greenhut rushing upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

Such is substantially the statement of this contempt case. O'Neals assault was alleged to have been for the purpose of intimidating Greenhut in the exercise of his duties as trustee and for the purpose of hindering him in doing his duty. The assault was committed a block and a half away from the Federal courthouse; court was not in session and the judge was absent from the district. There is no law of the United States by which O'Neal could be held guilty of committing a contempt of court under such circumstances. His act was not in the presence of the court or so near thereto as to obstruct the administration of justice. O'Neal was not an officer of the court and was not guilty of disobedience or resistance as an officer of the court. He was not resisting or disobeying any mandate, order, or decree of Judge Swayne's court, and Greenhut was not undertaking to carry out any mandate, order, or decree of the court when the difficulty occurred. There was not the slightest evidence that the difficulty occurred because Greenhut was trustee. It was simply a personal matter brought on between O'Neal and Greenhut, which perhaps was induced indirectly by the official actions of Greenhut, but not because he was a trustee or for the purpose of hindering him in his official duties as such trustee. After the impeachment of Judge Peck had failed, and he had so flagrantly violated his power as a Federal judge, the contempt statutes of 1831 were passed. They read as follows:

1. That the power of the several courts of the United States to issue attachments and to inflict summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts.

2. That if any person or persons shall corruptly, or by threats or force, endeavor to influence, intimidate, or impede any juror, witness, or officer in any court of the United States in the discharge of his duty, or shall corruptly, or by threats or force, obstruct or

impede, or endeavor to obstruct or impede. the due administration of justice therein, every person or persons so offending shall be liable to prosecution therefor by indictment, and shall, on conviction thereof, be punished by fine not exceeding \$500. or by imprisonment not exceeding three months, or both, according to the nature and aggravation of the offense.

This statute sets the exact limits of the power of Federal judges to punish for contempts. Judge Swayne should have known the provisions of this act. He was quick to see, after consulting the statutes, as he contends, that Belden and Davis were guilty of "misbehavior in their official transactions" as officers of his court under the act of 1831. His eagle eye instantly ascertained that the act gave him the power to punish for "misbehavior as officers of his court," but in the next breath, in a childlike and bland contention, he says that he was ignorant of the fact that the statutes on contempts prohibited him from punishing for contempt by both fine and imprisonment, although the two classes of the act were within the range of the same glance of the eye that made the discovery giving him jurisdiction. He read one part of the statute that gave him power to punish for contempt and omitted to read the other part within his vision which limited his jurisdiction. When the statute of 1831 was enacted there was no provision inserted in it that gave Judge Swayne power to punish, summarily, O'Neal for assaulting an officer of his court. Under section 2 of that act he might have been punished for endeavoring by threats or force, to influence, intimidate, or impede an officer of the court in the discharge of his duty. But the punishment should be "by indictment" under the very terms of that section of the law.

O'Neal was entitled to a trial by jury. He was entitled not to be put twice in jeopardy of life and limb. Judge Swayne had no power to compel him to testify against himself in this and foreign matters and offenses, as he did when he was on the stand stating the details of the difficulty. Judge Swayne tried him summarily in a contempt proceeding as if he were trying the case of an assault to murder. This statute clearly divested him of jurisdiction, and this he must have well known. It pointed out to him the method by which O'Neal could have been punished, and in the language announcing his sentence of punishment he quotes the section of the act of 1831, providing that because by threats or force O'Neal was endeavoring to intimidate Greenhut, his trustee, in the discharge of his duty he would punish him for contempt. In reading this statute he should have seen that it directed him to proceed by indictment in such cases, and stripped him of the power to summarily punish this man for an act committed far away from his court room.

In the case of Savin (131 U. S.) Mr. Justice Harlan said:

It is contended that the substance of the charge against the appellant is that he endeavored, by forbidden means, to influence or "impede" a witness in the district court from testifying in a cause pending therein, and to obstruct or impede the due administration of justice, which offense is embraced by paragraph 5399, and, it is argued, is punishable only by indictment. Undoubtedly the offense charged is embraced by that section, and is punishable by indictment. But the statute does not make that mode exclusive if the offense be committed under such circumstances as to bring it within the power of the court under paragraph 725; when, for instance, the offender is guilty of misbehavior in its presence or misbehavior so near thereto as to obstruct the administration of justice.

O'Neal was entitled to all the constitutional privileges of a man charged with an assault with intent to murder, in this proceeding, yet Judge Swayne took all these privileges from him.

O'Neal was prosecuted in the State courts for this offense, yet Judge Swayne put him in jeopardy a second time, in violation of the Constitution of the United States. No upright man can read the testimony of the proceedings of Judge Swayne in the O'Neal case and say that he acted as a just judge. The wonder is that some outraged citizen, pursued by his vengeance, did not drag this judicial autocrat from his high place, as Virginius dragged Appius from the throne he had disgraced. His victims suffered long and patiently; they permitted him to violate the Constitution and statutes of the United States and to trample upon their most sacred privileges secured by law. He took from them the right of trial by jury, imprisoned them for contempt when no contempt had been committed. We should shut our eyes to partisan politics and arraign this man for all his acts of tyranny and violations of law. In the name of the Constitution and statutes of this country, whose provisions he has violated and disgraced on many occasions, he should be sent before the American Senate.

In the name of the Federal judiciary, whose purity he has tarnished and whose ermine he has stained, he should be impeached for high crimes and misdemeanors—not on one charge alone, because all the specifications conspire to show the tyranny, corruption, and true character of this judicial monster. A reading of the record discloses that from the moment he came upon the bench in the court room his restless eye looked around for some one to mark as the victim of his wrath and vengeance. There seemed to be no goodness in his heart. He was in pursuit of some one over whom to exercise his powers as judge. He sent some of the best citizens of Florida to the bogs and fens of that State. Young Hoskins destroyed his life with his own hand rather than face this man upon the bench. O'Neal, pursued and hounded for months by him, has gone to his reward in another existence. There are also many other citizens of the State of Florida who are trembling and dreading his power. Not since the days of Peck has a judge so abused his high prerogatives.

The power of a Federal judge is great; but give to him life tenure of office and add to it the dogma, "The king can do no wrong," and in a brief period it makes tyrants of most men.

This judge has not hesitated to shut his eyes to plain constitutional provisions. He has denied the sacred right of trial by jury. To scandalize a public functionary under the old sedition laws was an offense, but the defendant had the poor privilege of proving the truth of his charge and the right of trial by jury under the terms of the law. This law against the freedom of speech and the press became odious with the people, and not a vestige of it remains. But in this modern day to speak against this petty judge, whether false or true, brings down his wrath and he refuses to hear the truth as a justification against him, holds at naught the sacred constitutional right of trial by jury, and summarily consigns to prison citizens who dare assert in his court a statutory and constitutional privilege. Oh, for the spirit of the people who blotted out the ancient sedition laws of the early days of the Republic. In the ages past when one of the wise men of antiquity was questioned as to the best possible form of government, he replied: "That in which an injury done to the humblest citizen is regarded as an injury done to the whole community." This spirit taught by the ancients can alone preserve our free institutions and stay the tyrant's hand. [Prolonged applause.]



said act did not reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of January, A. D. 1903, a period of about nine years.

Wherefore, the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

As is well remembered, Judge Swayne lived at St. Augustine, Fla., when the lines of his district were changed in the year 1894, and he lived outside of the northern district of Florida, for which district he had been appointed to act as judge, until very recently, when charges against him originated. Under an express statute recited in these specifications it became his duty to remove into his district and reside therein while judge. But, mark you, he did not wish to remove and did not intend to remove, and he did not remove his residence into the northern district of Florida until within the last year, since impeachment proceedings were inaugurated against him. In his statement before the Judiciary Committee he said: "After a consultation with my friends in Jacksonville and vicinity they urged me not to move my furniture nor my family, saying that the next Congress would be Republican and the district would be placed back in its usual form." This solemn admission before the committee evidences the complete intent on his part to remain out of the northern district of Florida, and it sheds light on the true inwardness of his feelings and desires, and by this declaration his subsequent acts must be construed.

The district was never changed by Congress after 1904, as he and his friends believed and prophesied would be the case. His family never removed into the district, but remained in the State of Delaware. Permit me to submit here the evidence of witnesses on the question of residence. It proves conclusively that the intentions and acts of Judge Swayne were a violation of the statute quoted. Where such a statute has been violated there is no legal excuse that can be pleaded by the judge. He is guilty of a high misdemeanor and should be removed from office. C. H. Laney, an attorney in the State of Florida, testified that he had made trips to Guyencourt, Del., and that he found out while there that Judge Swayne periodically visited there and spent almost his entire summers there. He swore that Judge Swayne had nominally a home there, a furnished house, and that he has a place there called his place, at which he stays. The place, he testifies, is at Guyencourt, Del., a small hamlet, with a railroad station and post office, about 8 miles north of Wilmington.

On the question of inconvenience to litigants, Judge W. A. Blount testified that "Judge Swayne's absence from the district had resulted in inconvenience, and that the question as to whether it had resulted in detriment would depend upon whether matters could be decided as well upon written as upon oral argument, and whether certain matters ought to be decided *ex parte* instead of *inter partes*." C. M. Coston, an attorney of Florida, swore that "the length of time in each year which Judge Swayne spent in the district consisted of the time which it required him to go there, hold his term of court, and go away, usually from two to five weeks."

Judge A. C. Blount, jr., testified that he had learned from Judge Swayne and others that the Judge had a home at Guyencourt, Del. He swore that he and Judge Swayne had been on pretty friendly terms and that he sometimes held conversations with the judge,



during the course of which the judge had spoken of his place at Guyencourt, Del., his horses, etc.

J. C. Keyser testified that "Judge Swayne was never in Pensacola, Fla., except during terms of his court, shortly before and shortly after, and that he boarded while he was there."

W. H. Northrup testified that "Judge Swayne stopped at his house during the time he was holding court in Pensacola and that he had heard Judge Swayne speak of his old homestead at Guyencourt, Del." He also testified that "he had heard Judge Swayne say that he would come to Florida, but he had never heard him say that he intended making his home there."

George P. Wentworth testified "that Judge Swayne occupied the Simmons residence, and that his family came to Florida while court was being held and then went back to his place at Guyencourt, Del."

J. E. Wolfe, who had been United States district attorney and assistant United States district attorney, swore that "it was generally understood that Judge Swayne had a home in Guyencourt, Del., where he resided when he was not required to be in Florida at terms of court, and that when court adjourned he would go away." He testified that "Judge Swayne rented a residence for a few months, and that he boarded for some time with Capt. Northrup, in Pensacola." He swore that "Judge Swayne would usually arrive a day or two before court met, remain until the business of the court was disposed of, and go away," and that "the Judge usually held three terms of court in the district per annum, each term of from 10 days to 2 weeks' duration."

Judge Swayne testified that he had not been a registered voter in 14 years, and that he had not paid his poll tax in Florida or qualified himself to vote. Out of 365 days in each year for the last 10 years he has spent in all only about 60 days in his district while actually holding court. He has maintained his family in Delaware. The only evidence tending to show that he attempted in the slightest degree to obtain a residence in the northern district of Florida is some excuse offered by his clerk, Mr. Marsh, and his friend, Capt. Northrup, claiming that he was trying to secure a home in the district on one or two occasions for the purpose of bringing his family there. Both of these witnesses state that he never secured the home.

More than 10 years ago the people of Florida, through their legislature, denounced him as being a corrupt judge and susceptible to corrupt influences. He has never forgiven the legislature or the people of that State for their action. He has lorded it over them and has been determined to show these people that he would not reside amongst them permanently and obey the mandates of the statute requiring him to reside in his district. His acts have been the very plainest violation of the statute, and on all occasions he has manifested his contempt and scorn for the people of that State.

For my part, I have no doubt that Judge Swayne never intended to remove into the new district as fixed by the act of Congress in 1894, and the evidence will convince any fair-minded man who will read it that he has never actually acquired a residence there until the Florida legislature forced him to do so by beginning these proceedings. There should be no hesitancy on the part of any Member of Congress to remove him from office on these specifications. The day of reckoning

for this judge has come. He has defied the people and their laws long enough. For my part, I shall not shut my eyes to his flagrant violation of the plain statute, but when the hour comes shall pronounce judgment against him on this specification and send him to the high court of impeachment, where the Senate will strip the judicial ermine from him and place it upon worthy shoulders of an honorable successor.

The next points claiming my attention will be the Davis and Belden and O'Neal contempt cases. Those specifications read as follows:

ART. 8. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge, as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days F. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 9. That the said Charles Swayne having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days F. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 10. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore, the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 11. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a circuit judge of the United States court heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

The points involved in the Davis and Belden cases are substantially these: On the 15th day of February, 1901, a suit was instituted in Judge Swayne's court, in the northern district of Florida, by

Florida McGuire and others against The Pensacola City Co. through her attorneys, Simeon Belden and Louis Paquet. The case was not tried at the spring term of court.

On the 19th day of October, 1901, Mr. Belden and his cocounsel, Mr. Paquet, presumably from the city of New Orleans, addressed a letter to Judge Swayne, at Guyencourt, Del., asking the judge to recuse himself in the above-entitled case on the ground of his personal interest in the litigated land. To this letter Judge Swayne made no reply. He came to Pensacola and opened his court on the 5th day of November, 1901. It has been contended on the other side of this House that Judge Swayne announced in open court on November 5, 1901, in the presence of the attorneys, Belden, Davis, and Paquet, that his "relative" had purchased block 91 of the land involved in this suit, and that he, learning of the litigation pertaining to block 91, had returned the deed. They have said that he made a general statement in the presence of Davis and Belden on November 5, 1901. Judge Swayne has not said anywhere, nor is there any legitimate testimony in this record, that such a statement was made by him in the presence of Belden and Davis prior to November 11, 1901, after Davis had dismissed in his court the case of Florida McGuire v. The Pensacola City Co. Indeed, on November 5, 1901, Davis had not been engaged or employed in the case. Let me here submit Judge Swayne's testimony on this point, and the only statement touching it ever made by him:

On November 5, 1901, while engaged in the trial of a criminal case, counsel for plaintiff in the case of Florida McGuire came into court, and I immediately suspended proceedings and called them up and explained to them the situation as above detailed, and notified them that their letter was not in such form as to be the foundation of a formal order, but that I would not recuse myself as requested. I made my explanation clear and emphatic, and I am certain that they could not mistake or misunderstand the statements of fact that I then made.

He only states that "counsel for plaintiff in the Florida McGuire case came into court," and does not say that Belden or Davis came into court. What counsel? It could only have been Paquet, of New Orleans, because Davis was not then an attorney in the case, and Belden was sick with facial paralysis in his hotel at Pensacola, Fla., according to all the evidence. Hence, Davis and Belden did not hear this statement when he made it, because they were not in court, according to any testimony in this record. There is no legitimate testimony anywhere authorizing the inference that Davis ever was in the Florida McGuire case until the morning of the 11th day of November, 1901, when he was counsel only by courtesy to dismiss the case at the instance of Mr. Paquet and Mr. Belden. Hence, Judge Swayne's offense against Davis was vastly more grievous than the one against Mr. Belden, although it was enormous against that venerable attorney.

The contempt proceedings were instituted on the 11th day of November, and Davis never came into the case until that morning, although it is undeniably true that Judge Swayne was sued by Davis and others on Saturday evening, about 8 o'clock, November 9, immediately preceding the Monday when the contempt rule was entered. Before Davis ever came into the case Belden and Paquet, of the city of New Orleans, had requested Judge Swayne to recuse himself on the trial of the case and had offended his imagined dignity. He had

declined to recuse himself and had stated that a "relative" had purchased a part of the land. This was on November 5. He did not have the honesty to state on that day, when refusing to recuse himself, that the so-called "relative" was his wife. An honorable judge should have instantly stated the facts to all the counsel in the case. Judge Swayne contends that he did not object to being sued by these attorneys, for they had a right to sue him. Still, the charge against the attorneys as drawn by Mr. Blount was solely for the fact that they had brought suit against Judge Swayne. Here is the gravamen of the charges against Belden and Davis:

To show cause before this court at a day and hour to be fixed by the court why they shall not be punished for contempt of the court, in causing and procuring as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and the Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91 in the Chevaux tract, in the city of Pensacola, Fla., a tract of land involved in controversy in ejectment then depending in this court in a case wherein the said Florida McGuire was plaintiff and The Pensacola City Co. et al. were defendants.

Belden, Davis, and Paquet had the right to believe that there was some transaction going on between the real estate firm of T. C. Watson & Co. It can not be denied that suit was then pending, or that judgment had already been rendered in favor of T. C. Watson & Co. against C. H. Edgar to recover commissions for the sale of the land to Judge Swayne or his wife prior to November 5, 1901. Whether this suit had been brought to judgment or not is immaterial.

J. C. Keyser testified, in giving his estimate of the value of the land and in response to other interrogatories, that "I gained from the fact that there is a judgment in Judge McCullough's court for commissions of \$70—5 per cent on \$1,400—and \$8 abstract fee against Charles H. Edgar and in favor of Watson & Co., lot No. 91, to Mrs. Lydia C. Swayne." He further testified that the value of the land was about twice \$1,400. Belden and Paquet knew of this suit or judgment. It was freely rumored in Pensacola that Judge Swayne had bought lot 91, a part of the land in controversy before him in the McGuire case, Mr. Belden testified. His testimony is as follows:

The Florida McGuire case against Blount et al. was instituted early in the year, but was not ready for trial at the spring term. During the summer of 1902 the rumor was general through the town that Judge Swayne had purchased lot 91 of the De Rivas tract, which was in litigation before him as judge of the circuit court here. The rumors were so definite and of such form as to leave no doubt in the minds of counsel of the purchase. So, the 19th day of October, Judge Paquet and myself addressed a letter to Judge Swayne requesting him to recuse himself, for the reason I have just stated, being a party at interest; to recuse himself and notify Judge Pardee, so he could assign a disinterested judge at the November term. He never replied to the letter at all, and, so far as I know, never informed Judge Pardee, the circuit judge, of the circumstances surrounding himself and the case. The November term I was sick—had an attack of facial paralysis—but our clients telegraphed me to come over, though I could not appear before the court.

Later, on the 9th or 11th, he replied to our communication, in which he declined to recuse himself, and went on to state he had not purchased the land; that a relative of his had purchased the block of ground in question, and that he had got hold of the deed and returned the deed to the vender of the deed. The vender of the deed was C. H. Edgar, a party defendant in the suit in question, and he being a party defendant, made Judge Swayne a party defendant through him, as we supposed. He stated that the deed had been sent on to this relative at Guyencourt, and he returned it, as he had no interest whatever. The following day, without any reference to the case whatever, the judge called up this, and in his statement he said: "The relative



a most excellent judge, and these letters were addressed to the President of the United States, recommending Judge Swayne's appointment as circuit judge of the fifth judicial circuit. Judge Maxwell, to whom the gentleman from Florida [Mr. Lamar] on yesterday gave high praise as an honorable gentleman, wrote a letter to the same effect, recommending him to be a member of the circuit court. Now, is it not quite strange that a man who has won the respect and confidence of the people among whom he is living, so that the lawyers of his district should write letters in his behalf, that the leading citizens of his State should write letters in his behalf, giving testimony of his character and his fitness for a judge, that all at once this man should be denounced in that community as a tyrant, as a corrupt judge, and lawless, without standing, without reputation, and a man not fit alone for the bench, but unfit to mingle among the men of his country? I say there must be some reason for this. What is the reason? In 1901 the record shows that Judge Swayne stood high in the State of Florida. He had the confidence of the judges in the State and in his district. He had the confidence of the lawyers that were practicing before him. He had the respect of the people among whom he moved and lived, and Judge Swayne to-day, in my judgment, would have had that same respect—Judge Swayne would have retained that same confidence—if it had not been for the fact that on one Monday morning a banker of that State sought to cut the throat of an officer of his court and he punished him for it.

You can trace back all these troubles to Mr. O'Neal's difficulty. Prior to that time Judge Swayne's record was good; since that time his record has been bad. O'Neal and his hirelings have influenced the Legislature of Florida; they have lobbied through it a resolution against Judge Swayne; they have sent copies of this resolution broadcast throughout the land; they have caused the press of the country to write him down, and they have been persistent, tireless, and malicious in doing this. It is O'Neal's lawyers and O'Neal's money that are doing it all. And shall we stand here and by our vote perform the last act in this persecution, and ourselves condemn him upon statements that are unworthy of credit?

Now, look at the O'Neal case. I desire to discuss it briefly, and as quickly as I can. I say the O'Neal case is responsible for it all. A man by the name of Moreno filed his petition in bankruptcy in Judge Swayne's court. The creditors met. Mr. Greenhut was elected trustee, and his election was confirmed. He then became an officer of that court. He then had charge of the affairs of the bankrupt estate and it was his duty to gather it together and hold it for the benefit of the creditors. It then became his duty to see that the estate belonging to the bankrupt was brought in to be distributed among the creditors. Acting under the advice of his counsel, acting within the line of his duty as an officer of the court, discharging that which the orders of the court required him to do, he commenced an action against Mr. Moreno, and made several of the banks defendants, to recover property of about the value of \$12,000. Mr. O'Neal was the president of the American National Bank, which was one of the parties defendant. This suit was commenced on Saturday. Going down the street on the following Monday morning, Mr. O'Neal saw Mr. Greenhut standing by the



Some things are not denied. Briefly to summarize, blank mortgages and blank notes were forwarded to Judge Swayne at Guyencourt, Del., for him and his wife to execute. Some of the testimony shows that the price he was to pay for the land was but half its value. That fact was known and believed by many people in Pensacola. It was notorious that there was a suit pending for commissions, for the reason that the judge or his wife had already bought the land. Judge Swayne admitted from the bench that a "relative" of his had negotiated for the land, not disclosing, as judicial honor would require, that the "relative" was his wife. There is testimony in these proceedings from his lips that his "wife had some money which she inherited from her father's estate," and, further, that "she had paid for this land with her money." With these facts well known, the air being full of rumors, when the attorneys undertook to question the judge about it, he perched himself upon the bench and said that he had explained and would not permit the attorneys to proceed further toward recusing him.

Mr. Speaker, I say they had the right to question his jurisdiction to try this cause. They had the right to sue him in the State court, and they had the right to believe that he was interested in the land. These attorneys would have done violence to their clients if they had not undertaken to oust him from jurisdiction in this cause. They should have charged, as they did charge, that he was guilty of purchasing the land for himself or his wife while it was in litigation in his court. No matter what his alleged dignity led him to say, the facts show that deeds and mortgages were passing back and forth between him and real estate agents of Pensacola in reference to this land.

Mr. GOLDFOGLE. Mr. Speaker, I should like to get my idea clear about the act of Judge Swayne in committing Belden and Davis for contempt. Did the commitment, as made by Judge Swayne, set forth the act alleged to be a contempt of his court?

Mr. HENRY of Texas. The commitment did not. The commitment simply stated that they were guilty of a substantial contempt of his court.

Mr. GOLDFOGLE. Is that all?

Mr. HENRY of Texas. Yes; that they were guilty of a substantial contempt.

Mr. GOLDFOGLE. Are the papers in evidence upon which the contempt proceedings were predicated?

Mr. HENRY of Texas. Yes; and I am going to read from them.

Mr. GOLDFOGLE. What I would like to know is this: Whether the papers clearly indicate that the reason, or rather that the motive, that actuated Judge Swayne was the commencement of a suit against him for ejectment?

Mr. HENRY of Texas. Yes; I am going to take that up right now.

Mr. GOLDFOGLE. Or does it show any other act on the part of Belden and Davis which might be construed into a contempt of court?

Mr. HENRY of Texas. Now, I haven't a great deal of time, but will answer the gentleman's question. This is the charge against the attorneys—not the manner in which they brought the suit:

To show cause why they should not be punished for contempt of the court in causing and procuring as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment wherein Florida McGuire is plaintiff and the Hon. Charles S. Swayne

is defendant to be issued from said court and served upon the judge of this court to recover the possession of block 91, the Chevaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then pending in this court in a case wherein the said Florida McGuire was the plaintiff and the Pensacola City Co. and others were defendants.

That was the ground, that he had been sued by these attorneys, and Davis was not then in the case. He was not in Judge Swayne's court, was not connected with the litigation in the remotest degree in his court until November 11, although for bringing the suit in the State court on the Saturday preceding November 11 he is charged with contempt and imprisoned and fined \$100. There has been some contention that these gentlemen did not purge themselves of contempt. It is true the motion of Blount was not sworn to and the attorneys, Belden and Davis, who were acting under the sanction of their official oaths as officers of the court, did not swear to their answer. Judge Swayne regarded the motion of Blount as being a sufficient pleading, and he treated the answer of Belden and Davis as being a sufficient pleading in his court. Their answer did clearly purge them of contempt. As I have mentioned above, Belden was not in Judge Swayne's court on November 11 when he made his statement, neither was Davis. Judge Swayne has not said so, and there is no testimony to show that they were present. This allegation in their answer purges them of contempt:

Second. That the petition to recuse referred to in said motion they had nothing to do with before this court, nor were they present on the 5th day of November when submitted, as stated in said motion, nor present when any statement made by the judge concerning his connection with any of the property, except the statement made by said judge on November 11, after court convened and after the motion to discontinue in the case of Florida McGuire v. Pensacola City Co. et al. was made.

Third. To the second paragraph sheweth: As above stated, they heard no declaration made by the judge referred to in said paragraph.

They denied the facts upon which the contempt charge was based. They denied in this answer that they were present on November 5, as Blount had charged against them. Davis was not an attorney until November 11. Still, for bringing the suit on Saturday, November 9, before he was an attorney in any way in the McGuire case, he was adjudged to be guilty of contempt. Can anyone contend that this judge had the power to punish him when he was not acting as an officer of the court until two days after the suit in the State court was brought? So it is clear that Judge Swayne transcended his power; that he was vindictive and cruel. Because, forsooth, these attorneys believed and charged that he was interested in this land they were made the objects of his judicial wrath and vengeance.

The specification in the O'Neal case is as follows:

ART. 12. The said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of the duties of his office of judge heretofore, to wit, on the 9th day of December, A. D. 1902, at Pensacola, in the county of Escambia, in the State of Florida, did unlawfully and knowingly adjudge guilty of contempt, and did commit to prison for the period of sixty days, one W. C. O'Neal, for an alleged contempt of the district court of the United States for the northern district of Florida. Wherefore the said Charles Swayne, judge, as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

Gentlemen on the other side of this House have contended that Judge Pardee held that Judge Swayne was acting in accordance

provement Co. and others to recover possession of over 200 acres of land. The description of the property involved in this action was so uncertain that nobody could locate it. During the summer Judge Swayne, in company with his wife, sought to buy several pieces of property in the city of Pensacola, Fla., as an investment. They were shown a piece of land known as lot No. 91. Judge Swayne had no knowledge that it was in any way in litigation before his court or included in the property referred to in the said action. He went to Guyencourt, Del. A deed was made by one Edgar, the owner of lot 91, but it never fell into the hands of Judge Swayne at all and he never saw it. It was retained by Edgar's agent, Mr. Hooten, who kept it in his possession.

Hooten advised Judge Swayne, by letter, that Edgar would not give a warranty deed for the lot because he was afraid of the Caro claim. The Caro claim was land involved in the litigation before Judge Swayne in the case of Florida McGuire. Judge Swayne answered the letter by saying: "You may cut this out." That is all he ever said in relation to it. He gave no reason why he would not take the lot. He did not say: "I want a warranty deed," or "I will not take it because you failed to give me a warranty deed," but as soon as it was brought to his knowledge that it involved land in litigation before him he ordered it to be cut out and he did not take it.

So later on Judge Paquet and Mr. Belden, representing the plaintiffs in this action, wrote a letter to Judge Swayne about this matter, asking him to recuse himself because he had an interest in part of the land involved in the litigation before him. This letter was not answered. Now, I have heard Judge Swayne's action criticized here because he did not answer this letter. I have heard Members say "Why didn't he answer this letter?" I express my opinion that a lawyer is not acting fairly when he writes a judge a letter upon matters of that kind. He almost is in contempt of court by doing so. If Judge Swayne was interested in this property, there was a way to bring it to the knowledge of the court by filing a formal petition, setting forth the facts and asking him to recuse himself, and serving a copy of it upon the attorneys for the opposite side. This is what lawyers practicing before the courts in an honorable way should have done; and the defendant had a right to be heard because he was interested in this action as much as the plaintiff. But they wrote a letter asking Judge Swayne to recuse himself without finding out whether or not he owned the land, and without giving any notice to the defendants. When court convened on the 5th of November Judge Swayne, having received this letter and properly not answering it, because he could not send his opinion and his decrees throughout the country, because they must go on file where they will stand as a part of the records of the case, called the counsel for plaintiffs before him. He made a statement to them that he had received the letter: that they had made no formal demand on him to recuse himself, and he informed them at that time that he had no interest in this land, he or his wife owning no portion of it, and that he would try the action. Judge Belden states that Judge Swayne said at that time that a relative of his owned it. Judge Belden was not there on the morning when the court made this statement and he never heard it. Judge Swayne says differently and Mr. Blount, who heard it, testifies differ-

as soon as he was at liberty, he then being engaged in a conversation with one A. Lischkoff.

The said Greenhut answered that respondent could speak to him then, and both he and respondent stepped to the rear of the said Greenhut's office, when the respondent reproached the said Greenhut with his attitude toward the bank of which he had been a stockholder and director, both in his refusal to pay the negotiable paper hereinbefore mentioned and in the bringing of an unfounded suit against it. The conversation, however, concerning chiefly the bringing of said suit against the said bank, hot words passed between the said respondent and said Greenhut, during which the said Greenhut said that he would "do respondent up," to which respondent answered that he did not come to have a disturbance and would not fight in his office except in self-defense, but that if he had to fight he would do so if the said Greenhut would come out upon the street.

When the respondent turned to leave the office and when he had nearly reached the door, he turned and said to the said Greenhut, "Well, you know you lied about the Moreno acceptance, for you said that you would pay it," the Moreno acceptance being the negotiable paper hereinbefore mentioned. As respondent turned, saying this, he noticed that the said Greenhut was following him, and as he said it, the said Greenhut (who was short, stout, heavily built, and apparently much more muscular than respondent) struck the respondent (who is thin and feeble) and forced him against the railing in the said office. The respondent shoved the said Greenhut a little away from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocket knife, and opened it in order to protect himself, and upon said Greenhut rushing upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

Such is substantially the statement of this contempt case. O'Neals assault was alleged to have been for the purpose of intimidating Greenhut in the exercise of his duties as trustee and for the purpose of hindering him in doing his duty. The assault was committed a block and a half away from the Federal courthouse; court was not in session and the judge was absent from the district. There is no law of the United States by which O'Neal could be held guilty of committing a contempt of court under such circumstances. His act was not in the presence of the court or so near thereto as to obstruct the administration of justice. O'Neal was not an officer of the court and was not guilty of disobedience or resistance as an officer of the court. He was not resisting or disobeying any mandate, order, or decree of Judge Swayne's court, and Greenhut was not undertaking to carry out any mandate, order, or decree of the court when the difficulty occurred. There was not the slightest evidence that the difficulty occurred because Greenhut was trustee. It was simply a personal matter brought on between O'Neal and Greenhut, which perhaps was induced indirectly by the official actions of Greenhut, but not because he was a trustee or for the purpose of hindering him in his official duties as such trustee. After the impeachment of Judge Peck had failed, and he had so flagrantly violated his power as a Federal judge, the contempt statutes of 1831 were passed. They read as follows:

1. That the power of the several courts of the United States to issue attachments and to inflict summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts.

2. That if any person or persons shall corruptly, or by threats or force, endeavor to influence, intimidate, or impede any juror, witness, or officer in any court of the United States in the discharge of his duty, or shall corruptly, or by threats or force, obstruct or



the morning. Why all this unseemly haste? Why all this great anxiety to sue a judge that stated to them he never owned the land? If anybody owned it his wife owned it, and they should have sued her. There can be only one reason, there can be only one motive, and that was the motive that Judge Swayne attached to their actions, that they sought to embarrass him, that they sought to interfere with the trial of this action; that, as lawyers of his court, they acted with gross and serious misbehavior. Gentlemen tell us that because this action was commenced in a State court no contempt was committed in the Federal court. Does it make any difference where a man commits the act if it is contemptuous of the court? Were they not acting in a bad manner? Was not their conduct unbecoming honorable lawyers? Were they acting in good faith? When Judge Belden was asked the question why he commenced this suit in this manner he said, "Why, we wanted to get service on him before he got out of the State." Yet they knew he was to be there Monday morning to hear the case when it came up. You may say all you please about it and discuss it from every conceivable standpoint, but there is one important fact in the case that answers it all. Judge Paquet, the leading counsel in the Florida McGuire case, the man who helped to put up this job, the man who was charged with contempt, came into court and filed with the court a written statement stating that he had acted wrongly in the matter, that the court was justified in viewing it as he did, and asking the court to forgive him for his conduct, and humbly apologizing. Now, what is the use of arguing that they did not intend to do this or that they did not intend to do that; that they were all acting in good faith; that they were acting as under the law they had a right to act, when one of them, the principal one, comes into court and confesses to the contrary, when one of them makes a statement showing the motive with which this suit was commenced? It seems to me that this written statement made by Paquet answers every argument that has been made, and clearly shows that Judge Swayne was not mistaken when he found that they had been guilty of misbehavior as officers of his court and therefore guilty of contempt.

Mr. Davis says, and it is contended here on the floor, that he was not an attorney in the case at the time the action against Judge Swayne was commenced. The evidence is clear that he was. The clerk of the court spoke with him that Saturday about getting out subpoenas. Judge Belden says he was in the case before that evening. Judge Paquet says he had been there for a week consulting with parties in the suit and finally asked him if he had any objection. Paquet, Belden, Marsh, and, I think, Keyser, one of the parties to the suit, all say that Mr. Davis was an attorney in the suit long before this action was commenced in the State court of Florida against Judge Swayne, although he denies it. Now, they say they intended to dismiss the suit on the following Monday morning. There is no evidence to that effect. Judge Swayne had no knowledge of it. It was not brought to his notice, it was not made part of evidence in the case. If that is true, why did they not put it in their answer? And here is another circumstance quite important to consider. When this matter was being heard before Judge Swayne, when he had it under consideration, Mr. Belden and Mr. Davis never took the witness stand in their own behalf. They filed a statement, but it was not



under oath. They filed a statement by which they tried to deny his jurisdiction. They called Mr. Blount and Mr. Fisher to the stand, but these two parties charged with contempt, these two parties charged with conduct that would have disbarred them as lawyers in that court, when the matter was pending before Judge Swayne, never took the stand to give any evidence in their own behalf at all. Is it not passing strange that a man who is innocent will not take the stand when charges are made against him? Is it not passing strange that if these men were acting in good faith they would not have so stated to the court? What was Judge Swayne to conclude from this action, from their manner, and from the course they were pursuing? Just the same as any fair-minded judge would have concluded, that they were wrong and they knew it, but would not submit themselves to an examination which would clearly indicate that they were wrong. Now, they said he acted arbitrarily; they said he acted viciously in passing judgment upon them, and it is charged that he acted ignorantly, because why; he imposed upon them a fine and imprisonment. Judge Swayne says that was a mistake of law on his part, and I want to say not only was Judge Swayne mistaken on this point, but Judge Blount, who was there also, knew nothing about it, and the parties themselves, who are claimed to be good lawyers, had no knowledge of this law, and when they took the matter before Judge Pardee they never raised that point then, as far as this record shows, until Judge Pardee himself pointed it out. Now, then, because a judge has entered a judgment not in accordance with the law, is he to be impeached? If that is true, then no judge ever sat upon the bench—not even Blackstone—whom under the same reasoning we could not impeach. Will we impeach judges for the mistakes they make, for errors they make? Why, I want to call your attention to something that shows how easy it is to make mistakes by those who are good lawyers. In filing his report the gentleman from Pennsylvania, in speaking about this matter, stated that they purged themselves under oath. He said they filed an answer there which was verified by which they purged themselves, and for that reason the proceeding against them should have been dismissed under the law.

Mr. PALMER. Will the gentleman point me to the place where I said that they filed an answer which was verified?

Mr. GILLET of California. You stated they purged themselves under oath.

Mr. PALMER. That is quite another matter. The witnesses testified that they filed an answer to purge themselves. That is the record on which I go. I never said that the answer was sworn to.

Mr. GILLET of California. I will call the gentleman's attention to it in just a moment, as I do not want to misrepresent the gentleman. You made it in your argument when you first brought the matter up, but you did not make it the last time you spoke because your attention was called to it. You said, on page 15 of your report, that—

Knowing the law, Judge Swayne issued a rule to show cause why Davis and Belden should not be committed for contempt upon an unsworn statement of Mr. W. A. Blount. He ignored the sworn denial of the accused that they had committed or had intended to commit a contempt.

Now, the law does not require the statement to be verified, and the record shows that neither Belden or Davis answered under oath.

The gentleman from Pennsylvania [Mr. Palmer] says:

Presuming that Judge Swayne knew the law, he knew that proceedings for contempt not committed in the presence of the court must be founded upon an affidavit setting forth the facts and circumstances constituting the alleged contempt, sworn to by the aggrieved party or some other person who witnessed the offense.

Now, I say that that is not the law. It is not the law as laid down by the Supreme Court of the United States. It is not the law as laid down by the courts of the land. It is only laid down in two States, where they have statutes requiring it, and as able a lawyer as the gentleman from Pennsylvania [Mr. Palmer] made a statement that is erroneous so far as the law is concerned and just as bad as that made by Judge Swayne. He says:

Judge Swayne knew that issuing of proofs without filing the proper affidavit was erroneous, and that the error is not cured by the subsequent filing thereof.

Mr. PALMER. The gentleman from Pennsylvania quoted there, did he not, to sustain his position?

Mr. GILLET of California. The gentleman says that the rule of common law is this—"that if any party can clear himself upon his oath, he is discharged." Knowing the law, Judge Swayne issued a rule to show cause why Davis and Be'den should not be committed for contempt.

That is the statement. They not only failed to file an answer under oath denying the charges preferred against them but they absolutely failed to take the stand and defend themselves or to make any explanation under oath as to what happened or what prompted them to commence the action or that their motives in so doing were proper, although other witnesses were called. Now, the case stands like this: It has been passed upon by the circuit court on a writ of habeas corpus. It was held that they were officers of his court and he had a right to inquire into the proceedings, he had a right to inquire into the merits, and he did inquire into the merits, and he passed upon them and found the parties guilty of contempt. It is the duty of a lawyer to uphold the dignity of the court of which he is an officer. It is his sworn duty to see that the court is not brought into disgrace and that its orders and rules are observed. It is his duty to treat the judge courteously and kindly, and not slander him and not bring unfounded suits against him. If he does these things he is guilty of a misbehavior as an officer of the court, and under the statutes he may be punished. It seems to me there is nothing that can be shown—that there is nothing in the charges urged here—that Judge Swayne acted without authority of law when he took those men and imposed upon them the judgment which he did for contempt of his court. They were not acting in good faith. They conspired together in the dead of the night. They wrote that article for the newspaper. They never followed the suit up at all. The only thing that they ever did was to file one paper, and that was the end of it. They brought this matter before the public and in that way accomplished the very purpose which they sought to accomplish. And after having been punished for doing this act, they make that the basis here for impeachment. Why, while Mr. Davis was before the Florida Legislature lobbying through resolutions condemning Judge Swayne, he never at that time thought this was sufficient grounds against Judge Swayne for which to impeach him, and no mention of it whatever is made in the resolutions passed by the Florida Legislature.

## RESIDENCE.

Now, let us take up the question of residence. It is contended that Judge Swayne did not have a legal residence in the northern district of Florida. I ask the gentlemen, where has Judge Swayne lived since 1895? Where has his home been? Where has he gone and voted, and where has he paid taxes? If his home has not been in Florida, where has it been?

Mr. PALMER. Does the gentleman from California [Mr. Gillett] ask me?

Mr. GILLETT of California. Yes, sir; I will ask the gentleman from Pennsylvania [Mr. Palmer].

Mr. PALMER. Then I will say that it has been at Guyencourt, Del. He has been there 212 days out of every year.

Mr. GILLETT of California. The gentleman from Pennsylvania says that Judge Swayne has been in Guyencourt, Del., for 212 days out of every year. Then I say to the gentleman from Pennsylvania [Mr. Palmer], since you have established that fact so conclusively, that settles the whole business. And why did you not bring Guyencourt, Del., down here to prove it? We told those prosecuting Judge Swayne to bring their witness, and they sent a Mr. Laney to Guyencourt to find proof that Judge Swayne made his residence there, and they never brought a single, solitary witness who lives in Guyencourt, Del., or any other place to prove that Judge Swayne lived there. Judge Swayne has not lived there for years.

Mr. PALMER. I say he said it himself.

Mr. GILLETT of California. He had not lived there for years, and the clerk of his court, in his evidence, stated that Judge Swayne spent his summer vacation at Guyencourt. If Judge Swayne lived in Guyencourt it was an easy matter to prove, and not a single witness was sworn as to that fact. I want to call the attention of the gentleman from Pennsylvania, who has been so industrious in fixing Judge Swayne's residence at Guyencourt, to the fact that the records show where Judge Swayne was during various months of every year from 1895 to 1903. The gentleman says that he was 212 days at Guyencourt. I demand that the gentleman produce his evidence. There is no witness who testified that he was there any number of days. You have taken the number of days he was holding court, and you have assumed that he was the rest of the time at Guyencourt, Del.

But let me tell you, Mr. Speaker, if that were true, if he was there in the old homestead and by the side of his old mother, 84 years of age, now in declining health, and whose life will probably be taken by reason of this vicious prosecution, he was not there as a resident, but as an affectionate son visiting his mother. He tried cases in January, February, March, April, May, October, and November and December, in Alabama, Texas, and Louisiana, and in his own court. Why do you not bring your witnesses and fix his home as being there? Is Guyencourt, Del., abandoned of people? Have you not the power of subpœna to bring them here if you know it is a fact, or have you kept it from this House and left it to be proven in the Senate? This shows how utterly unfounded is this charge and the efforts that have been made to mislead the minds of honorable gentlemen of this body so that they may vote impeachment. I will file a statement here showing that he was trying cases during all the spring and winter months

and the fall months. I will read them to the gentleman from Pennsylvania, if he will listen. This is from 1895 down to 1903. In 1895 he was trying cases during the months of February, March, April, May, November, and December. In 1896, during the months of January, February, March, April, May, June, July, November, and December; in 1897, January, February, March, April, May, June, July, and September; in 1898, February, March, April, May, June, November, and December; in 1899, January, February, March, April, May, June, October, November, and December; in 1900, January, May, June, July, September, October, November, and December; in 1901, January, February, March, April, May, June, July, September, November, and December; in 1902, January, February, March, April, June, November, and December; in 1903, January, February, March, April, May, June, October, November, and December. All through these years, I will state to the gentleman from Pennsylvania [Mr. Palmer], the record shows that Judge Swayne was either in Louisiana, Alabama, or Texas trying cases; that he was assigned there by circuit judges, and I will let it go on record that because for a few weeks or a few months during the heat of the summer he spent the time with his mother on the old homestead where he was born, in Delaware, the gentleman from Pennsylvania charges him with a high crime, and expects and will ask the honorable Senate of the United States to convict him and dismiss him in disgrace from the high office which he now holds. If this is all you have to base your claim for nonresidence on, I say it is the duty of this House to turn it down, and this question should never have been raised here.

Mr. PALMER. Will you yield to an interrogation, now that you have exhausted the peroration?

Mr. GILLET of California. Yes, sir.

Mr. PALMER. Do you mean to tell the House that Judge Swayne was in those places that you have named during those months you have named? Is it not true that he was 93 days a year outside of his district holding court?

Mr. GILLET of California. I say this: I copied it from the record of the clerks of the courts, that he was holding court those very months. I copied it but last night, and propose to put it in the Record. I do not say that he was at those places all through the month. Sometimes he was there all the month and sometimes a part of the month, and some of the time was spent in traveling backward and forward to the places stated. Is there any evidence to show that his house is in Delaware? Is there any evidence to show that his furniture is in Delaware? He left Delaware years ago and moved to Philadelphia, where he practiced law, and after having won the confidence of the leading citizens of Pennsylvania, in 1885 he went with his family to Florida; and in 1895, when the House of Representatives had legislated him out of his district, he went to Pensacola and registered there in that city and told the clerk of his court and Mr. Northup to find a house for him if they could, and they said they never could get him a suitable place, though for several years they tried to do so.

He tried to purchase three properties from 1896 to 1900. He did rent the Simmons house in the fall of 1900 and moved in with his family. In the spring of 1893 he bought the A. C. Blount home, which he now owns, and late in the fall moved into that. When he

went away to hold court in these different places he registered himself "Charles Swayne, Pensacola, Fla." Does not a man know where his home is? To comply with the law must he have a mansion, must he keep a carriage and servants, must he live in a house of his own? Can he not maintain a residence and live in a hotel or live in a boarding house? If he can not, a bachelor never can hold office in this country without standing some chances of being impeached. His own conduct shows that he intended to reside there. He did reside there; he made his home there; he did his business there; and I want to say that when Mr. Hooten wrote him about these deeds that he said he had in his possession, he says, "You may take the matter up when you come home." Mr. Hooten, one of the leading citizens of Florida, writing him in Delaware, says, "We will take these matters up when you come home."

Of all the unfounded charges in this world that can be brought against a man to degrade and impeach him is this charge made against Judge Swayne that he had no residence in northern Florida. He had no residence any place in the world if he had no residence there. The intention governs, and, under the decision read here by the gentleman from Maine [Mr. Littlefield] in his address, referring to the case from Colorado, there can be no mistake as to the law in this matter. Are we going to ask the Senate of the United States to impeach Judge Swayne and to degrade him because in obeying the commands of his superiors, as the law obliges him to do, he spent a large part of his time out of his district in different States? I say there is no merit to this question at all. I do not see how gentlemen can vote for impeachment with the facts standing here as they do stand, and, as far as I am concerned, I do not propose to do it.

#### PRIVATE CARS.

Now, take the question of private cars. I want to hurry along as quickly as I can. Take the question of using these private cars. I do not want to be understood as commending the conduct of any public officer in riding in private cars furnished gratuitously by a railroad company. I do not stand here to say it was right for Judge Swayne to do so, but I do contend this, that under the circumstances it does not present a case of that enormity which would authorize us to commence impeachment proceedings. There was no intent to corrupt or influence him. It was not accepted with that in view. The railroad was in the hands of the receiver and the proceedings were pending before his court. He was the head of it. It was under his control; it was managed by the orders that he made and by his officers, and while in Guyencourt, Del., the receiver, Mr. Durkee, of his own volition, sent a private car to Delaware for him. The car cost nothing to move it back and forth from Jacksonville to Guyencourt, not a thing in the world. The porter upon this car was engaged there by the month and his wages went on just the same. The conductor that had charge of the car was paid by the month and his wages went on just the same, and after the car had been sent to Guyencourt it had to be hauled back any way.

Now, if Judge Swayne had said to Mr. Durkee: "I want you to get out of here with your car, and I will ride back in another one," and



if he had done so that would have been all right; but because he went into the car of the road of which he was the head, after he had been requested by the receiver to come back to Jacksonville, and consumed a few provisions on the way down, and this 10 years ago, it is made now the basis of an impeachment proceeding.

Mr. MOON of Pennsylvania. Thirteen years ago.

Mr. GILLET of California. This took place 13 years ago. I suppose the expense included some beefsteak, perhaps a little cabbage, some potatoes, and small potatoes at that, if we are to measure them by the character of the proceedings here in relation to this matter. And because he accepted this courtesy from the receiver, because a few provisions were furnished to feed him for 24 hours, they ask us 13 years afterwards to impeach him. I say it is trifling with the Senate of the United States to send a matter of this kind there in a serious way.

He made his trip to California and he made it at his own expense. There is no evidence that the company was ever out one farthing on account of that trip. No complaint was ever made by the creditors at all that they were ever wronged; and it seems to me that if it is worth anything it simply stands here as a living example of the efforts that are being made to bring Judge Swayne into disgrace in this country. While I say I do not commend the use of private cars, if you start in to impeach upon this ground, where are you going to stop? The highest officials in this land have accepted courtesies of this kind, judges and governors, and are doing it to-day. Where are you going to stop? How long since we have become so righteous that we will go back 13 years to impeach a public officer for riding in a private car, when we could have found them riding in private cars within a month, if we had sought evidence against them?

I do not believe this House will vote in favor of that charge. I feel confident that the Senate of the United States will not treat it seriously.

Now, there is another charge that walks in here at the eleventh hour as one of great importance, and one which will surely persuade this House to vote impeachment—it is the question of expenses. It seems to me, Mr. Speaker, that the record shown here by the gentleman from Iowa [Mr. Lacey] clearly cuts this out as an article of impeachment. What attitude are we in? Suppose we did agree that under a fair construction of the law that a judge was only entitled to receive what would be his actual expenses incurred and no more. Suppose we all conceded that that was the construction that should be placed on this statute, and that none other could be placed on it. Look at the record. It stands before us here that a large majority of the judges of the United States in years past have construed that law to mean that they were allowed an allowance of \$10 a day when ordered to hold court out of their district. When the matter in 1896 was brought to the attention of the Senate, Senator Allen, from Nebraska, called the attention of the Senate to the fact that some of the judges in the land were using this as a means of drawing \$10 a day when their expenses were less. Senator Allen introduced an amendment that they should only receive their actual expenses incurred. The Senate passed the amendment, it came to the House, and we refused to concur; and that, too, with the knowledge on our part of what the judges in this country were doing.

Later on, in 1898, this matter came up before the House of Representatives. At that time the gentleman from Alabama [Mr. Underwood] used this language:

Now, this section in the bill very materially changes the provisions of section 715 of the Revised Statutes. In the first place, it provides a compensation of \$10 a day to the district judges during the time they are traveling from their homes to the places where they hold extra courts. The statute already gives them \$10 a day compensation during the time they are holding courts, but this gives them an additional compensation of \$10 a day while traveling back and forth.

The gentleman from Alabama, was then of the opinion—I believe he was a member of the Appropriations Committee—that this \$10 a day was compensation granted to them under the law, which they were drawing and which they had a right to draw and receive. Then this colloquy took place:

Mr. UNDERWOOD. As I understand, the judge gets \$10 a day after he gets to the place where he is going to hold the court.

Mr. CANNON. Not the district judge, but the circuit judges.

Mr. UNDERWOOD. When a new district judge is sent to hold court when another judge is sick, he gets, under the law, \$10 a day.

Mr. CANNON. I do not so understand it. Let me give my understanding, so as to get the exact difference between us. I understand the district judge gets his \$5,000 a year, if that is it—

Mr. UNDERWOOD. Yes.

Mr. CANNON. When he goes outside to hold court, he does not get anything.

Mr. UNDERWOOD. My friend from Illinois, I think, is mistaken. When he goes to attend court he gets \$10 a day compensation for holding that court during the days he is there, and I think that is sufficient, for he already gets \$5,000 a year, and to pay him \$10 per day while at court will more than cover his expenses and it is sufficient compensation without giving him the additional amount in this bill.

Mr. CANNON. Commencing on line 16, "expenses of judges of the circuit courts of appeals"—

Mr. UNDERWOOD. That excepts the circuit court judges, and they would not receive it anyway, for it is their duty now.

Mr. CANNON. I understand when the circuit court is held away from the residence of one of the circuit judges—I mean the appellate court—they get \$10 a day.

So the controversy goes on. It was stated here in 1898 on the floor of this House and to the Members present and to all the world, so the Members of the House understood it, that the law as it then stood entitled the judges, when sent out of their districts, to receive \$10 a day. That is the construction placed upon it by the Members of this House; and with this understanding the bill passed and became a law; and now are we, after the language that was used in 1898, when the present law was reenacted by Members of the House; after the debates that have taken place concerning this question and recorded at the time; after we decided that judges were to receive \$10 per day as an allowance or compensation, going to impeach a man because he took the \$10 a day, when the law intended that he should receive it, and everyone at that time so understood it?

Mr. BEDE. Will the gentleman answer a question?

Mr. GILLET of California. Yes.

Mr. BEDE. Has not the House already impeached Judge Swayne?

Mr. GILLET of California. I say that through an awkward proceeding, by putting the cart before the horse, without the power or opportunity to debate the specifications that we were going to send to the Senate, we have voted to impeach Judge Swayne, but I want to say this to the gentleman from Minnesota, that if we at that time made a mistake, and we are not brave enough to take it back now,

we are not worthy to be Members of the House of Representatives. [Applause.]

Mr. BEDE. If Judge Swayne is innocent he ought to have a trial?

Mr. GILLET of California. No, sir; there is nothing to try if he is innocent.

Mr. BEDE. Have we not done the worst thing we can? He has been impeached before the country, and everybody is talking about it; if he is innocent he ought to have a trial, and if he is guilty the people ought to have a trial. [Applause.]

Mr. GILLET of California. If Judge Swayne has been impeached before the people of the United States, it has been done by those who have been maliciously pursuing and hounding him for several years.

Mr. BEDE. Did not the gentleman from California agree to the impeachment a month ago, and hasn't he been discussing it ever since?

Mr. GILLET of California. If I made a mistake in the first instance, I want to say to this House that I have the manhood to stand up and say, after the disclosure of all these facts which I have mentioned, that I did Judge Swayne an injustice, and if I have a chance I am going to vote to undo the wrong I did him. [Applause.]

Mr. BEDE. Are we going to impeach the Judiciary Committee of this House?

Mr. GILLET of California. The Judiciary Committee of this House is no more infallible than are men.

Mr. LITTLEFIELD. I want to say to the gentleman that nine members of the Judiciary Committee were against this proposition in the beginning.

Mr. PALMER. I would like to inquire of the gentleman what information he has now that he did not have when he voted to impeach Judge Swayne. Has there been any testimony taken before the Judiciary Committee since that time? Is not the record just the same as it was when we voted?

Mr. LITTLEFIELD. I would like to answer that question.

Mr. PALMER. I am not asking the gentleman from Maine.

Mr. LITTLEFIELD. The gentleman does not want me to answer.

Mr. GILLET of California. Mr. Speaker, the gentleman asks me what information I have. I have this information: I have a statement from the Secretary of the Treasury as to the number of judges throughout this country who had charged the same amount, and which the gentleman from Pennsylvania [Mr. Palmer] refused to be permitted to be shown. Right or wrong, I have it. I have this also: I have a statement made by honorable Members of this House in 1898 that it was the intention of the law that these judges should draw \$10 a day, and when they draw \$10 a day under that statement we have no right in fairness and in just spirit to say they should be impeached for doing it, and I am not going to do it. [Applause.]

Mr. BEDE. The gentlemen admits that the judge has already been impeached. I am not a lawyer. I am here as a plain American citizen. The lawyers seem to have muddled the case. You have already impeached a judge in high office in the United States. Now, the question is one of mere formality of sending the articles of impeachment to the Senate, and yet the lawyers in this House have been trying the case for a week. I am a plain American who wants information.

Mr. GILLET of California. If the gentleman is a plain American, I will ask him to stand on his American manhood and do unto an American what he would have an American do unto him. [Applause.]

Mr. BEDE. I am willing to do that.

Mr. GILLET of California. If this House, through the Judiciary Committee, has made a blunder, if they have made a mistake in this matter, and now, after five or six days of debate, we have ascertained that we have made a mistake, we can recall what we have done, with honor and credit to ourselves, from the Senate and put it before the world that Judge Swayne is not to be impeached.

Mr. LITTLEFIELD. And what about the Hoskins case? They relied on the Hoskins case. Call their attention to that. There is no foundation for that.

Mr. GILLET of California. We have stated in the report to this House, or the majority has reported, and it has been argued on this floor, that Judge Swayne should be impeached because he entered into a conspiracy to ruin an old man by the name of Hoskins living in the State of Florida. The charges were baseless. They were unfounded. Even the gentleman from Pennsylvania [Mr. Palmer] confesses now that there is nothing in them. It has been said around this great broad land of ours that Judge Swayne has bankrupted men, and that Mr. Hoskins was one of them. They sowed all this seed, and now when in fair discussion we take it up they try to get away from it. They have abandoned the Hoskins case. They have abandoned the charges that every bankrupt estate that went before his court was reeking with wrong. They have abandoned the charge that he was corrupt. They have abandoned the charge that he was ignorant, and they have abandoned eight or nine of the specifications that were furnished us. I say that it is time, they having backed out of all of these charges, that we as Members of this House should back out of the rest and get our feet on ground that is fair and honest.

If the prosecutors have a right to abandon seven or eight charges that have been sent broadcast over the land, that have been brought on the floor of this House, that have been embraced in the majority report, because they are groundless and without merit, then we have the same right to abandon the rest when they are no better grounded. Now, I say it is time the people of this country should commence to look into this matter a little. It is time the Members of this House should commence to stand on what is fair and right. It is time we should stop listening to reports from Judge Swayne's political enemies in Florida and endeavor to try the case fairly and justly and honestly and upon its merits. It seems to me he has been hounded and pursued from one end of the country to the other. They have made charges and have backed down from them. They have sent to every Member, under seal, the articles passed by the Florida Legislature. Everything that O'Neal's money could do, everything that a vicious spirit could do to blacken the reputation of Judge Swayne has been done. What act has Judge Swayne ever done in the discharge of his duty that is wrong? He has tried cases throughout Alabama; he has tried cases throughout Louisiana; he has tried cases throughout Texas, month after month and year after year, and no complaint comes from these states of his wrongdoings. He is indorsed here as a judge and as an able judge by Judge Pardee. Where has he been wrong? Whom

has he wronged? What judgment is not right? Where is there any corruption shown in this case? I have present here, and I shall put them in the record, telegrams from the best citizens of Pensacola, Fla.—lawyers, doctors, bankers, merchants, and timber men—in which they repudiate the statements made on the floor by the gentleman from Pennsylvania [Mr. Palmer] and the gentleman from Florida [Mr. Lamar] and say that they have confidence in Judge Swayne's integrity and that they are not behind this impeachment proceeding. The following are the telegrams:

PENSACOLA, FLA., *January 14, 1905.*

Hon. J. N. GILLETT, M. C.,

*House of Representatives, Washington, D. C.:*

We believe in the integrity of Judge Charles Swayne, and as citizens of his judicial district number ourselves as his friends.

F. C. Brent; J. J. Stephens, jeweler; C. L. Mann, jeweler; Peter Lindenstruth, jeweler; Thos. C. Watson, real estate; M. M. Lewey, editor and publisher; H. H. Friedrichsen, merchant tailor; Chas. Friedrichsen, merchant tailor; J. E. Watson, engineer; McKenzie Oerting & Co., merchants; John A. Merritt, ship broker; H. G. Dailva, merchant; F. F. Bingham, lumber merchant; W. K. Hyer, jr., cashier, First National Bank; B. Jones, broker; W. F. Fordham, M. D.; John B. Guttman; J. F. Taylor, broker; A. M. Stillman, deputy collector of customs; Jas. A. Rikson, deputy collector of customs; Alfred Moog, wholesale liquor dealer; David Bear, retired merchant; Morris Bear, wholesale merchant; Max Klein, merchant; Dave Danneise, liquor dealer; Alex. Lischkoff, jeweler; Henry Horsler; N. G. Forcheimer, shoe merchant; Wm. Falk, merchant; D. Kugelman, wholesale merchant; H. Mueller, merchant; B. L. Gundersheimer, merchant; A. M. Cohen, wholesale notion merchant; J. N. Broughton, contractor; J. F. Rhodes, merchant; C. J. Kenney, merchant; W. L. Gilmore, hotel keeper; Geo. Bell, merchant; Jacob Kreiger, underwriter agent.

PENSACOLA, FLA., *January 13, 1905.*

Hon. J. N. GILLETT,

*Washington, D. C.:*

We believe that Judge Swayne has the friendship and good wishes of many citizens of Pensacola, among them ourselves.

Douville Timber Land Company; C. F. Marsh, M. D.; A. C. Binkley, lawyer; C. W. Hageman, timber merchant; F. B. Bruce, merchant; Laz Jacoby, merchant; B. Gerson, merchant; Louis Friedman & Co., merchants; B. E. Clutter, merchant; P. Stone, merchant; W. J. Forbes, merchant; Sol. Cahn, merchant; W. H. Knowles, First National Bank; L. Hilton Green, Citizens' National Bank; P. H. Whaley, Episcopal minister; T. F. McGourin; F. G. Renshaw, M. D.

DE FUNIAK SPRINGS, FLA., *January 15, 1905.*

Hon. J. N. GILLETT, M. C.,

*Washington, D. C.:*

We regard statements in Congress on 13th against Judge Swayne as being too strong. Having attended his courts and seen his action upon bench we express our confidence in his fairness. We are his friends.

F. N. Kolmetz, deputy marshal; L. F. Cochrane, jeweler; L. W. Plank, real estate dealer; W. F. Hall, salesman; J. H. New, confectionery merchant; Frank R. Hartford, deputy collector; Chas. M. Cox, attorney at law; J. F. King, M. D.; D. H. King, merchant; Robert Alsbrook; John D. King, merchant; M. T. King, merchant; P. F. Leight; A. L. Breach.



CEDAR KEYS, FLA., *January 14, 1905.*Hon. J. N. GILLET, *Washington, D. C.:*

We express disapproval of Representative Palmer's statement in House. We have high opinion of Judge Swayne's judicial action and have confidence in his impartiality as a judge. We believe he has always been fair to citizens of Levy County.

J. L. COTTRELL, *Member Town Council.*J. R. MITCHELL, *Town Marshal.*J. A. WILLIAMS, *Attorney.*R. L. TISON, *Merchant.*FRANK CALE, *Pilot.*FRED. CUBBERLY, *Attorney.*TALLAHASSEE, FLA., *January 14, 1905.*

Hon. J. N. GILLET,

*House of Representatives, Washington, D. C.:*

We admire Judge Swayne, thinking him fair, honest, and able.

Jeff D. Ferrell, blacksmith; B. R. Kelley, merchant; Frank E. Craig, constable; W. L. Strickland, deputy United States marshal; J. F. Hill, merchant; J. Ball, Bloxham Hotel; Aaron Levy, merchant; A. Wanship, cigar manufacturer; R. B. Carpenter, merchant; W. E. Bradley, farmer; G. R. Hodes, naval stores; R. E. Hightower, merchant.

TALLAHASSEE, FLA., *January 14, 1905.*

Hon. J. N. GILLET,

*House of Representatives, Washington, D. C.:*

Palmer's statment that Judge Swayne has no friends not fact. All Republicans and many Democrats admire him here.

EDMUND C. WEEKS, *Surveyor General.*MARIANNA, FLA., *January 14, 1905.*

Hon. J. N. GILLET,

*House of Representatives, Washington, D. C.:*

I have served as United States commissioner for near 10 years; attended 15 terms of court; sent near 400 cases for final trial before Judge Swayne. Talked with grand and trial jurors and defendants, and never heard anything but praise for Judge Swayne from any of them. He has thousands of friends, and the charge that he has not is base and slanderous. Letter follows.

JOHN THOS. PORTER.

Let the people of Florida pass on this question themselves, and you will find the best citizenship of Florida denouncing this very proceeding as they are already denouncing it. Judge Swayne has friends in Florida. He numbers among his friends men who stand high in society and in the business world. I was there and I listened to the O'Briens and the Keyzers and others of that ilk, and I saw them there upon the stand and I sized them up, and I say there is no evidence produced that for a moment can convince my mind that Judge Swayne is guilty of any of the charges preferred against him. Champagne to carry through the resolution of impeachment in the Florida Legislature; six or seven lawyers lobbying the bill; a Federal judge with only one Republican friend on the floor. Is it wonderful that he was impeached by the State of Florida? And the only thing now that they rely on, it seems to me, in which there can be a particle of merit, is the question of Davis and Belden and the ques-

tion of his nonresidence, and they are absolutely without a foundation. I was proud yesterday when the gentleman from New York [Mr. Cockran] said so eloquently, so logically, that he did not believe in the charge of these expenses; when he spoke of the right that a judge had to protect his officers because of the protection to which they were entitled to receive under the law that justice might be administered in the courts. I thought he spoke well and spoke advisedly, and I wish it could be read again to the Members of this House before they take their votes. And in conclusion I wish to say I know not what other Members of this House may do, I know not what views they may entertain, but as far as I am concerned, having been connected with this matter for nearly a year, having been to Florida and in several of its cities observing the manner and demeanor of witnesses on the stand, finding out something about the spirit that is behind this, inquiring into the merits both from the facts and the law, I can not say that I would do justice to my conscience if I would vote to send to the Senate articles of impeachment so groundless as they are, to have the Senate spend its valuable time in passing upon them sufficiently long to kick them out, and I trust that this House, in all spirit of fairness, with an attempt to do what is right and just by a man, will weigh these matters carefully and satisfy their own consciences and their own hearts that they are right before they answer to their names when the roll is called. [Great applause.]

## APPENDIX.

## JUDGE CHARLES SWAYNE.

April 1, 1904. Referred to the House Calendar and ordered to be printed. Mr. Gillette of California, from the Committee on the Judiciary, submitted the following views of the minority (to accompany H. Res. No. 274):

On the 10th day of December, 1903, the House passed a resolution, a copy of which is as follows:

[House resolution No. 86, Fifty-eighth Congress, second session.]

Mr. Lamar of Florida submitted the following resolution:

"Whereas the following joint resolution was adopted by the Legislature of the State of Florida:

"Senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida.

"Be it resolved by the Legislature of the State of Florida: Whereas Charles Swayne, United States district judge of the northern district of Florida, has so conducted himself and his court as to cause the people of the State to doubt his integrity and to believe that his official actions as judge are susceptible to corrupt influences and have been so corruptly influenced;

"Whereas it also appears that the said Charles Swayne is guilty of a violation of section five hundred and fifty-one of the Revised Statutes of the United States in that he does not reside in the district for which he was appointed and of which he is judge, but resides out of the State of Florida and in the State of Delaware or State of Pennsylvania, in open and defiant violation of said statute, and has not resided in the northern district of Florida, for which he was appointed, in ten years, and is constantly absent from said district, only making temporary visits for a pretense of discharging his official duties;

"Whereas the reputation of Charles Swayne as a corrupt judge is very injurious to the interests of the entire State of Florida, and his constant absence from his supposed district causes great sacrifice of their rights and annoyance and expense to litigants in his court;

“Whereas it also appears that the said Charles Swayne is not only a corrupt judge, but that he is ignorant and incompetent and that his judicial opinions do not command the respect or confidence of the people;

“Whereas the administration of the United States bankruptcy act in the court of said Charles Swayne and by his appointed referee has resulted in every instance in the waste of the assets of the alleged bankrupt by being absorbed in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is in effect legalized robbery and a stench in the nostrils of all good people;

“Be it resolved by the house of representatives of the State of Florida, the senate concurring, That our Senators and Representatives in the United States Congress be, and they are hereby, requested to cause to be instituted in the Congress of the United States proper proceedings for the investigation of the proceedings of the United States circuit and district courts for the northern district of Florida by Charles Swayne as United States judge for the northern district of Florida, and of his acts and doings as such judge, to the end that he may be impeached and removed from such office.

“Resolved further, That the secretary of state of the State of Florida be, and is hereby, instructed to certify to each Senator and Representative in the Congress of the United States, under the great seal of the State of Florida, a copy of this resolution and its unanimous adoption by the Legislature of the State of Florida.

“THE STATE OF FLORIDA,  
“OFFICE OF THE SECRETARY OF STATE.

“UNITED STATES OF AMERICA, *State of Florida, ss:*

“I, H. Clay Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and exact copy of senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida, passed by the Legislature of Florida, session of 1903, and on file in this office.

“Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this the 7th day of September, A. D. 1903.

[SEAL.]

“H. CLAY CRAWFORD,  
“Secretary of State.”

“Resolved, That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the official misconduct of Charles Swayne, judge of the United States district court for the northern district of Florida, and say whether said judge has held terms of his court as required by law, whether he has continuously and persistently absented himself from the said State, and whether his acts and omissions in his office of judge have been such as in any degree to deprive the people of that district of the benefits of the court therein to amount to a denial of justice; whether the said judge has been guilty of corrupt conduct in office, and whether his administration of his office has resulted in injury and wrong to litigants of his court.

“And in reference to this investigation the said committee is hereby authorized and empowered to send for persons and papers, administer oaths, take testimony, and to employ a clerk and stenographer, if necessary; to send a subcommittee whenever and wherever it may be necessary to take testimony for the use of said committee. And the said subcommittee while so employed shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall serve the processes of said committee and subcommittee and execute its orders, and shall attend the sittings of the same as ordered and directed thereby. And that the expense of such investigation shall be paid out of the contingent fund of the House.”

The author of said resolution, Representative Lamar, was requested by the subcommittee appointed to investigate said charges contained in said resolution, to submit to it a statement setting forth specifically the charges referred to in a general way in said resolution. In compliance with this request, Mr. Lamar presented to said subcommittee the following, to wit:

“In re Charles Swayne, United States district judge in and for the northern district of Florida: Specifications of matters to be presented for investigation before the investigating committee of the House of Representatives, United States Congress.

“Specification 1.—That the said Charles Swayne, judge of the United States court in and for the northern district of Florida, for 10 years, while he has been such judge, was a nonresident of the State of Florida, and resided in the State of Delaware; that he never pretended to reside in Florida until May, 1903; that during said time of his nonresidence, by such nonresidence, he has caused great inconvenience, annoyance,

injury, and expense to litigants in his court, not so much by failure to hold terms of court as by failure to be in reach for the disposition of admiralty and chancery matters and other matters arising between terms of court needing disposition.

*"Specification 2.*—That said Charles Swayne, as such judge, appointed one B. C. Tunison as United States commissioner; that it was charged that it was an improper appointment, and that testimony was offered to such effect before said appointment.

*"Specification 3.*—That the said Charles Swayne, as such judge, appointed and maintains one John Thomas Porter as United States commissioner at Marianna, but that said Porter does not reside at Marianna, but at Grand Ridge, 16 miles away, and is never at Marianna or at his office except when notified of an arrest, necessitating people having business with United States commissioner, often at expense and inconvenience, to go to Grand Ridge, and necessitating the holding of prisoners for a day or two, at their inconvenience and in imprisonment at the expense of the Government, until said Porter sees fit to come to Marianna.

"The said Swayne, although there is great necessity for a commissioner at Marianna, has refused to appoint such.

*"Specification 4.*—That said Swayne, in the administration of his court, has been guilty of great partiality and favoritism to one B. C. Tunison, mentioned in specification No. 2, and a practicing attorney in said court; that so great and well known has this partiality and favoritism become that it has created the general impression that to succeed in that court before the said Swayne it is necessary to retain the said Tunison.

*"Specification 5.*—That said Swayne has been guilty of oppression and tyranny in his office, incorrectly and oppressively and without just cause imprisoning one W. C. O'Neal, one E. T. Davis, and one Simeon Belding upon feigned, fictitious, and false charges of contempt of his said court.

*"Specification 6.*—That said Charles Swayne has willfully, negligently, and corruptly administered bankruptcy cases in his court, to the extent that the assets of bankrupts have, in all or nearly all cases, been squandered or dissipated in paying extraordinary fees and expenses and never paying any dividends to creditors.

*"Specification 7.*—That said Charles Swayne was guilty of oppression and tyranny in his office to one Charles Hoskins upon an alleged contempt, resulting in the suicide of the said Hoskins, and said alleged contempt proceedings being brought for the purpose of breaking down and injuring one W. R. Hoskins, who was charged in said court with involuntary bankruptcy, but who was defending and resisting such charge.

*"Specification 8.*—That said Swayne corruptly purchased a house and lot in the city of Pensacola while the said house and lot was in litigation in his court.

*"Specification 9.*—Ignorance and incompetency to hold said position. Under this specification many illustrations could be given, among them a case in which he took jurisdiction in admiralty in violation of the treaty between the United States and Sweden and Norway, and in one case, that of Sweet v. Owl Commercial Company in which he charged the jury to exactly and diametrically conflicting theories of law.

*"Specification 11.*—That said Swayne, by reason of his absence from the State, failed to hold the term of court which should have been held at Tallahassee in the fall of the year 1902, during the months of November or December.

*"Specification 12.*—That the said Charles Swayne has been guilty of conduct unbecoming an upright judge in that he has procured as indorsers on his note, for the purpose of borrowing money, attorneys and litigants having cases pending in his court.

*"Specification 13.*—That the said Charles Swayne has been guilty of maladministration in the affairs of the conduct of his office; that he has discharged people convicted of crime in his court. Illustration, case of Alonzo Love, convicted in the year of 1902 of perjury."

The committee, on February 10, 1904, proceeded to Florida to take testimony in support of said charges, and examined many witnesses and received a large amount of documentary evidence. After receiving all the evidence and hearing arguments for and against the matters set forth in said specifications, your committee met to consider the same, and we all agreed that specifications numbered 2, 3, 6, 7, 8, 9, 11, 12, and 13 were not proven or were not of sufficient gravity to warrant impeachment charges being made.

The majority of the committee were of the opinion that specifications 1, 4, and 5 had been proven; that Judge Swayne also had wrongfully granted a continuance in the case of W. H. Hoskins, a bankrupt, when he desired to go to trial, and refused to hear his witnesses, and that charges of impeachment against him on these grounds should be preferred.

From this I dissented, because I did not believe that the evidence and the law warranted such a conclusion. I looked upon the impeachment of a Federal judge as a very serious matter, the proceeding being a quasi criminal one, and felt that before charges should be preferred that the mind should be satisfied beyond a reasonable doubt and to a moral certainty of the truth of the matters alleged, and that said mat-



ters should be of a most serious character, if not a high crime or misdemeanor, of such a willful and intentional misbehavior in office as to amount to a denial of justice to litigants or to cast discredit upon the court and to cause a loss of confidence in the honesty, integrity, and morality of the judge. I could not persuade myself to believe that every error made by the court, or every mistake made by him in the discharge of his high duties, should be considered sufficient grounds to impeach him. I realized that even the judge of a court is liable to err, both as to law and facts, that his decisions are not always correct, that his judgments are likely to be wrong and oppressive, and that he may exercise his discretion in such a manner as to defeat justice.

If a judge were to be impeached for every error which he committed that inflicted injury upon others, Congress would have to remain in constant session, and it would be the busiest court in the world. If every judge who has wrongfully found a person guilty of contempt should be cited to appear before the bar of the Senate to answer charges of impeachment, the business of that body would be blocked for many a day. How long would the authority of our courts and their decrees be respected if every dissatisfied litigant and every person found guilty of contempt could come to Congress, introduce a resolution with a great flourish of trumpets charging the judge with ignorance, corruption, tyranny, incompetency, and dishonesty, and thereupon the judge be investigated and brought before the bar of the Senate? The dignity of the courts must be maintained, and their judgments and decrees must be respected. Therefore Congress should be very guarded and careful in preferring charges of impeachment. The case, to warrant such charges, should be a very strong one, and before Congress acts there should remain no reasonable doubt that the judge against whom complaint has been made has willfully, knowingly, and intentionally been guilty of serious misbehavior in office, or has been guilty of some high crime or misdemeanor.

With this rule in my mind, I have carefully considered all of the evidence submitted, and I can not say that I feel satisfied therefrom that Judge Swayne has misbehaved in office; that he has been guilty of any high crime or misdemeanor; that he has been corrupt, tyrannical, or oppressive, or that his conduct is unbecoming a judge. Neither am I prepared to say that in the matters charged against him by the majority that he has committed any error of law, or that he acted in a tyrannical, vindictive, or oppressive manner. Neither do I believe that the evidence in the case warrants the action taken by the majority or is sufficient to cause the House of Representatives to prefer charges of impeachment, and to substantiate this belief I shall now consider the evidence in connection with charges preferred by the majority and the rules of law governing the same.

#### NONRESIDENCE.

First, as to the charge of nonresidence and the inconvenience, annoyance, injury, and expense to litigants in his court by reason thereof:

The evidence shows that in the year 1885 Judge Swayne moved from Pennsylvania to the State of Florida to practice law. In the year 1890 he was appointed district judge of the northern district of Florida, and shortly thereafter he moved to St. Augustine, which was in his district. In June, 1894, the boundaries of the district were changed, and St. Augustine became a part of the southern district of Florida. After this Judge Swayne ceased keeping house in St. Augustine and stored his furniture. He went to Pensacola, Fla., then the largest city in his district, and requested a friend to place his name on the register of voters. This was not done. From 1895 until 1900 Judge Swayne did not own or rent any house in Pensacola, or in his district, but boarded when there in hotels and with private families.

When he went to Pensacola first he directed Mr. Marsh, the clerk of his court, to find him a suitable house. Mr. Marsh testifies that he tried to find a house from October, 1895, to October, 1897, but could not get a suitable one. After that he tried to buy a house for him, and sought to purchase the Wright house, the Piagio house, and the Chipley house, but failed to get either. Capt. Northrup testified that when Judge Swayne first came to Pensacola he asked him to get for him a suitable house and that he took Judge Swayne in his buggy and drove him about to find a house but failed.

In 1900 he rented a house from Thomas C. Watson & Co., put his household furniture in it, and paid rent and insurance until May, 1903, when he moved into a house purchased by his wife and where he now lives. There is no direct and positive evidence or any evidence at all that from the year 1895 down to May, 1903, Judge Swayne had a home anywhere in the United States excepting in Florida. During a part of this time his family were in Europe. They lived with him for a short period in Pensacola, and his son came and lived with him for awhile.

In the resolution it is charged that during this time he resided in Delaware or Pennsylvania, but no evidence of this kind was offered, and it is very evident if Judge Swayne resided in either State and made his home there that it would have



been a very easy matter to have established that fact by an abundance of proof. A list of witnesses to prove that he resided in Delaware was furnished the committee, but none were called, and the prosecution rested without offering to call any of them, hence it is reasonable to suppose that it could not be proven that Judge Swayne resided in that State. In fact, he says he left Delaware in 1867 and has never since that date made his home there. Judge Swayne must have a residence somewhere. He established a residence in Florida in 1885, and there is no proof that he ever left that State to make his home elsewhere, or that he intended to do so.

The fact that he went north every summer to spend his vacation, or be with his aged mother, does not prove that he changed his residence, because this is a practice followed by some of the Federal judges in the South. The heat of that country becoming intolerable, they go north during the summer months. In 1900 he moved his furniture into a house in Pensacola rented from Thomas C. Watson & Co., and for three years paid the rent. He boarded at times in the Escambia Hotel and part of the time in private boarding houses during the time he was in Pensacola. The records of the court show that he averaged about two months each year in his district in the actual trial of cases; that he usually came to Pensacola a day or two before the term of court, and after the term was over would depart. It also appears in evidence that he would return to Pensacola also at times when the court was not in session and between terms.

Now, then, it being charged that he was a nonresident of the district and therefore guilty under the statute of a crime, to wit, a high misdemeanor, it falls upon the prosecution to prove beyond a reasonable doubt that Judge Swayne did not reside within the district but maintained a residence elsewhere, and I submit that absents himself any length of time from the district does not alone prove that he is a nonresident of it. The prosecution have not shown where his residence is if it is not in his district. Between 1895 and 1899 Judge Swayne requested parties in Pensacola—W. H. Northrup and Fred March—to find for him a suitable residence, and they testified that no suitable place could be found. He also attempted to purchase a house and also took some steps toward building one. This clearly shows the intent on the part of Judge Swayne to reside in his district, and surely a man's intent always controls on a question of residence. Residence is clearly a question of intent. A man chooses his own residence and that residence remains until he decides to have another. There is no evidence that Judge Swayne had no intent to establish his residence in Florida and in his district, or that he had any intent to establish it somewhere else. That he paid no taxes or did not vote is not conclusive that he did not reside in his district. Neither are necessary to establish residence.

But it is said he was absent from his district nearly 10 months during each year. But this, as said before, does not prove his residence was not there. Well, it is said, it is a strong circumstance and it proves that he was neglecting his business; that he was not discharging the duties of his office, and from this fact he should be impeached. Let us see. It is true that Judge Swayne was absent from his district, and for months; but it is not true that litigants in his court suffered great or any inconvenience thereby, or that they suffered any loss. Judge Swayne tells us the reason why he was away and where he was. He was on duty. He was not on a vacation, enjoying the quiet and rest of Guyencourt, Del., or idling away his time in seeking pleasures, but he was on duty most of the time. Under the law the circuit judge of a district may order a district judge to go into other districts and hold court, and also to sit on the circuit court of appeals.

The records in this case show that Judge Pardee and Judge McCormick ordered Judge Swayne to hold court in Alabama, Texas, and Louisiana at different times, and also to sit on the circuit court of appeals, and that he obeyed this order, as it was his duty to do. The certificates of the clerks of different courts in the States just named show when Judge Swayne held court therein, and here follows the record, not giving the States and courts, which can be obtained, but the number of months in which he held court in each year in said States and out of his district, commencing with 1895:

1895. April, May, November, and December, four months.

1896. January, February, March, April, May, June, November, and December, eight months.

1897. January, February, March, April, May, June, and July, seven months.

1898. January, February, March, April, May, November, and December, seven months.

1899. January, February, March, April, May, June, October, and November, eight months.

1900. January, May, June, September, October, December, six months.

1901. September.

1903. January and February.

Holding court for two months on an average in his own district would make him holding court on an average of about nine months each year. And this, it must be admitted, is a good record for holding court in the Southern States. A large part of the other three months, no doubt, were used by the court in preparing decisions and taking a vacation, unless he decided all of his cases from the bench, which is not likely. The record also shows that not only did he hold court in other districts seven and eight months during the year, but when the time for holding court in his own district arrived that he went there and dispatched all of the business and kept his docket clear. What does the majority want to impeach him for? Because he was absent from his district under orders; because he only worked nine and ten months a year holding court; because he kept his docket clear; because he did not work hard enough? No; certainly these can not be the reasons. Then what are they? If litigants were subjected to "inconvenience, annoyance, injury, and expense," as stated in the specifications, during the time he was absent from his district under orders from Judges Pardee and McCormick, then whose fault was it? And what right have parties to make this the basis for charges of impeachment, and what just reason can this committee give to accept the same as sufficient for preferring charges?

Now, the presumption of law is that Judge Swayne is a resident of his district. As long as a party retains an office which he holds during good behavior he is presumed to continue his domicile in the place where he is to exercise his functions. (*Oakey v. Eastin*, 4 La., 69.) This presumption, as already stated, must be overcome by evidence sufficiently strong to satisfy the mind beyond a reasonable doubt, because under the statute it is made a high misdemeanor not to reside in the district. It can not be overcome by hearsay evidence or by opinions of parties as sought to be done in this case, but by satisfactory evidence which is competent and relevant. One may be considered as dwelling and having his home in a certain town, though he has no particular choice there as the place of his fixed abode. (2 Me. Repts., 411.) A man is not prevented from obtaining a residence in a place where he goes to permanently make his home by the fact that his wife and children remain in his old home. (1 Bond, 578.)

Neither does absence from a man's place of business for a reasonable time cause him to lose or forfeit his residence there. Of course the judge's residence must be a legal one as distinguished from a constructive one, and his intent, coupled with his acts, go to make up this residence; that he pays no taxes or does not vote is not evidence sufficient to rebut the presumption of his residence. He may not have any property to pay taxes on, and may not, under some circumstances, care to vote. When a judge goes to a place avowedly for the purpose of making it his home, requests others to try and rent him a suitable house in which to live, endeavors to purchase a suitable place when he learns he can not rent one, contemplates building a home when he can not buy, and finally succeeds in renting a house which he moves into and pays rent thereon for three years, and finally occupies, with his family, a house purchased by his wife, surely must have established the fact that it was his intent in good faith to make his home in that place, and in the absence of a very strong showing it must be conceded that he has established a residence there.

Having established this residence he can not lose it because his duties as a judge require him to hold court in other States within the circuit in which his district is for seven and eight months a year, or by spending a vacation during the hot months of July and August with his aged mother in Delaware. Under all these facts it can not be said that Judge Swayne has violated the statute, and neither has he made any excuses for his nonresidence. He explained his absence from the district, as above stated, and surely this can not be urged as a sufficient ground for his impeachment.

This brings me to the other question stated in the first specification, to wit:

"That during said time of his nonresidence, by such nonresidence he has caused great inconvenience, annoyance, injury, and expense to litigants in his court, not so much by failure to hold terms of court as by failing to be in reach for the disposition of admiralty and chancery matters, and other matters arising between terms of court needing disposition."

Of course, if, as has just been stated, he was absent under orders holding court elsewhere, he is to be excused. But what are the facts on this question? J. E. Wolfe, a United States district attorney from 1895 to 1898, and for two years thereafter assistant district attorney, speaking of the loss and inconvenience of litigants caused by the absence of Judge Swayne from the district, says:

"I do not know of any case in which there has been an embarrassment on account of Judge Swayne's absence, and I do not know of any civil proceeding in which litigants were damaged or injured by the absence of the judge."

Mr. Marsh, the clerk of the court, was asked this question (237 of record):

"Q. Do you know of any loss to litigants by any inconvenience resulting by reason of the absence of Judge Swayne?—A. Never a complaint, except in one instance, and that was the signing of a bill of exceptions \* \* \* when Judge Swayne was holding a term of court in Waco, Tex. I shipped the bill to him and it was signed and returned in time."

W. A. Blount, one of the leading lawyers of Florida, says:

"Whether, as a matter of fact, his absence has resulted in injury or expense, I do not know. I can not say now if any cases have been delayed by this absence."

B. S. Liddon, one of the attorneys for the prosecution, attempted to show that he had a case which he was forced to settle because the judge was absent, and that he had a good defense to it. He said the action was commenced in the summer, and that Judge Swayne would not return until November. The facts are, as finally admitted by the witness when confronted with the record, that the suit was commenced on January 25, 1897, after the court had adjourned on January 9; that it was settled in February, and that the court returned from Texas, where he had been ordered to hold court, and held a term of court in Pensacola on March 6.

Another lawyer for the prosecution, Mr. Davis, was put on the stand to testify to inconvenience caused litigants by the judge's absence. He complained that he could not get a bill of exceptions signed readily because the court was absent in Delaware. It appears from the evidence that the delay was caused by the fault of Mr. Davis by not incorporating into the bill certain documentary evidence which the court directed to be included in it, but even then the bill was signed in time and no loss followed to anyone. One Marshall was sworn as a witness to prove that he was forced to settle a bankruptcy case owing to the fact that he could not get a hearing. A short time after the matter was commenced the judge was holding a term of court and Marshall never asked to be heard. I have cited the only three instances shown by the prosecution to substantiate this charge. All amounted to nothing; and it is quite evident, with the great industry of the gentlemen behind this movement, that if there was anything to support the charge they would have found it.

#### CONTEMPT OF O'NEAL.

Second. The majority contend that Judge Swayne should be impeached because he found W. C. O'Neal guilty of contempt and sentenced him to jail; that there is no law authorizing such a judgment, and that the judge acted arbitrarily and oppressively. I can not agree with the majority either as to their construction of the law or as to the facts. They have stated the strongest case possible in this matter against Judge Swayne without inquiring if the record does not contain facts to justify his conduct and to uphold his judgment. The facts are these:

On the 29th day of August, 1902, one Scarritt Moreno filed in the district court for the northern district of Florida his petition in bankruptcy. On September 15, 1902, one Adolph Greenhut was appointed trustee of the estate of said bankrupt. That the said Greenhut, as such trustee, in carrying out the implied orders of the court appointing him, and in the discharge of his duties to collect and recover the assets of the bankrupt, commenced an action in equity for the purpose of having a certain deed of property purchased by said bankruptcy in the name of his wife, and to have certain mortgages thereon declared null and void.

The American National Bank of Pensacola was made a party defendant in this action; W. C. O'Neal was the president of the bank. The action was commenced Saturday afternoon, October 18, 1902. On the following Monday morning the said W. C. O'Neal, when passing the office of the said Greenhut, where were kept the papers of said estate and the business thereof transacted, stopped and said to Greenhut that he wished to speak to him, and Greenhut replied, "I will see you right now," and both gentlemen stepped into Mr. Greenhut's office. What transpired in that office was only seen by Greenhut and O'Neal, and their statements are conflicting, O'Neal testifying that he went in there to reproach Greenhut for commencing the action; that hot words passed between them, and that Greenhut threatened to do him up; that as he started to leave the office he turned around and told Greenhut that he had lied about the Moreno acceptance, and that Greenhut then struck him and he pushed him away, and as he rushed upon him again he drew his pocketknife and cut Greenhut in self-defense.

Greenhut, in his affidavit, says that O'Neal went in his office with him, where he kept and had the custody of the papers, books, etc., relating to and connected with the books of said Moreno, bankrupt; that he asked him, Greenhut, why he had commenced the action against the American National Bank, and made the remark that he would settle with him, or will settle the matter, and that O'Neal then started to walk

out, and that Greenhut, not knowing of his purpose, followed. That when at the doorway O'Neal, without any provocation, turned and wheeled suddenly about with his knife in his hand and struck at his (Greenhut's) throat, cutting him at a point behind the left ear, cutting through a portion of it, thence across the left cheek to the corner of the mouth, stabbed him four times, inflicting serious injuries upon him which prevented him from attending to his duties as a trustee. Seventeen or eighteen days after this assault the said Greenhut filed in Judge Swayne's court an affidavit of which the following is a copy:

"UNITED STATES OF AMERICA,

*"Northern District of Florida, City of Pensacola, ss:*

"Adolph Greenhut, of the city of Pensacola, in the district aforesaid, being duly sworn according to law, on his oath doth depose and say:

"That theretofore, to wit, on the 29th day of August, 1902, one Scarritt Moreno filed in the honorable the district court of the United States in and for the northern district of Florida, at Pensacola, his petition to be adjudicated a bankrupt and to obtain the benefits of the acts of Congress of the United States relating to bankruptcy. That thereafter such proceedings were had upon said petition in said United States district court that on September 15, 1902, affiant was duly appointed trustee of the estate of the above-named Scarritt Moreno, bankrupt, which said appointment of deponent as trustee was then and there approved by the said court.

"Thereafter, to wit, on the day and year last aforesaid, affiant accepted said appointment and filed his bond as such trustee, which said bond was duly approved by E. K. Nichols, Esq., referee in bankruptcy, and at the same time deponent took the oath of office as required by law, and thereupon he became charged with the duties and clothed with the authority appertaining to a trustee in bankruptcy under the laws of the United States, and from thence hitherto has occupied and is now occupying said trusteeship, amenable to and subject to the orders of the said the honorable district court of the United States in and for the northern district of Florida.

"That affiant was, by his counsel, advised that it was his duty as trustee of the estate of said Scarritt Moreno as aforesaid to institute a certain suit or action in equity for the purpose of having certain property purchased by the said Scarritt Moreno, bankrupt, the title to which was taken by the said Scarritt Moreno in the name of his wife, brought into the said United States district court as a part of the estate of said bankrupt, to be there administered as required by law, and for the further purpose of having certain mortgages on said property decreed and declared to be null, void, and of no effect. That thereupon in the afternoon of Saturday, the 18th day of October, 1902, through his counsel, he, as trustee as aforesaid, and in the performance of his duty as aforesaid as an officer of the said United States district court, caused to be filed in the circuit court of Escambia County, State of Florida, his certain bill of complaint, therein and thereby, among other things, asking the relief above referred to.

"That by the advice of his counsel, Scarritt Moreno, Susie R. Moreno, his wife, the American National Bank of Pensacola, the Citizens' National Bank of Pensacola, and others were made parties defendant in and to said bill of complaint, and that upon the filing of the said bill of complaint suit was commenced against the defendants named in said bill of complaint. That all of the proceedings above referred to were taken and had by affiant as an officer of the district court of the United States in and for the northern district of Florida, and in the due, proper, and faithful performance of his duty as such officer, and were necessarily had and taken under the law and his oath of office.

"That on Monday, the 20th day of October, A. D. 1902, between the hours of 9 and 10 o'clock a. m., affiant was standing in the door of the office of the store owned and conducted by him, situated at No. ——— East Government Street, in the city of Pensacola aforesaid, which said office was occupied by deponent, among other things, for the purpose of performing the duties devolving upon him as trustee as aforesaid, and in which said office this deponent kept and had the custody of the papers, books, etc., relating to and connected with the estate of said Scarritt Moreno, bankrupt, in deponent's hands as trustee as aforesaid; that at the said time deponent was engaged in conversation with one Alex Lischkoff, when one W. C. O'Neal, who was at the said time president of said American National Bank of Pensacola, one of the defendants in the action or suit heretofore referred to, approached to where affiant was standing and conversing as aforesaid, and stated to affiant that as soon as he, affiant, was at liberty, he, said O'Neal, desired to speak to him. Thereupon affiant stated in effect that said O'Neal could speak to him then, and affiant entered his said office and stood alongside of a standing desk about 5 feet from the door of said office.

"Said O'Neal followed affiant into said office and stood opposite to affiant, and distant only a few feet. That thereupon said O'Neal in effect asked this affiant why



he, affiant, had brought the name of his, the American National Bank, into the Moreno suit (meaning thereby the suit above referred to, brought by affiant, as trustee, against Scarritt Moreno and others); that affiant replied that he, O'Neal, could see his, affiant's attorneys in relation thereto; that said O'Neal made some remark to the effect that he would not do so, and stated to affiant that he, affiant, was no gentleman, that affiant thereupon said that he, affiant, was as much of a gentleman as he, the said O'Neal; that thereupon said O'Neal said 'We'll settle the matter,' and turned about as if he intended to leave the premises of deponent, walking toward the door of said office and out upon the sidewalk; that affiant had no thought, idea, or suspicion that said O'Neal intended any personal violence toward him, and quietly started forward from where he was so standing as aforesaid toward the door of said office leading into the street.

"That affiant barely reached the doorway of said office when said O'Neal, without any provocation, without any notice to deponent of his murderous intention, turned and wheeled suddenly about with his knife in his hand, and, with intent to kill and murder deponent, struck at his, deponent's, throat with said knife, and cut deponent at a point behind the left ear, cutting through the lower portion of said left ear, then across the left cheek, ending at left corner of mouth; and immediately thereafter said O'Neal cut and stabbed deponent four further times: (1) On left side over lower ribs, (2) upon left hip, (3) on left elbow, and (4) on right hand. That the cuts, wounds, and stabs so inflicted by said O'Neal upon deponent were of a serious and dangerous character, and from said time to the present deponent has been unable to attend to and perform his duties as trustee as aforesaid, and has been confined to his home, except for a few hours on two or three different days, and has ever since been and is now under the care and treatment of a physician who is attending to said wounds.

"That said assault and attempt to murder was committed by said O'Neal as aforesaid solely because and for the reason that affiant, as an officer of the United States district court in and for the northern district of Florida, had instituted the suit above set forth against the said American National Bank and others, and to interfere with and to prevent deponent from executing and performing his duties as such officer of said court; and the said O'Neal did, by the said murderous assault, interfere with the management of the said trust by deponent as an officer of the said court, and did for a long period of time, to wit, from the said 20th day of October, 1902, up to the present time, by reason of the injuries inflicted by him upon deponent as aforesaid, prevent and deter deponent from performing the duties incumbent upon him, deponent, as such officer, and did thereby interfere with the management by deponent as such officer of the estate of the said Scarritt Moreno, bankrupt.

A. GREENHUT.

"Sworn to and subscribed before me this 7th day of November, A. D. 1902.

"E. K. NICHOLS, *Referee in Bankruptcy.*"

To this affidavit O'Neal filed an answer, a copy of which is as follows:

"And thereafter, and in the said day, to wit, on the 22d day of November, A. D. 1902, the following answer was filed in the said cause by the respondent therein to wit:

"In United States district court, northern district of Florida, at Pensacola. In re rule upon W. C. O'Neal to show cause why he should not be punished for contempt upon the statement set forth in the rule and the affidavit of A. Greenhut, thereto attached.

"Respondent, for answer to the rule and to the said affidavit, says:

"1. That he knows in part and presumes in part that the allegations of the first paragraph of the said affidavit are true.

"2. That he knows in part and presumes in part that the allegations of the second paragraph of the said affidavit are true.

"3. That the statements in the third paragraph of said affidavit are in part true and in part untrue, and that the following statement of the facts leading up to, accompanying, and surrounding the affray between himself and the said Greenhut on October 20, 1902, are true:

"That the said Greenhut had been, from the organization of the American National Bank of Pensacola, in October, 1900, a stockholder and director thereof; that while he was such stockholder and director the said bank received from the said Scarritt Moreno a certain mortgage for the sum of \$13,000, to secure certain indebtedness due or to become due by the said Moreno to the said bank; that the said transaction was an honest and bona fide transaction, and that the said Scarritt Moreno was and became indebted to the said bank in a large sum of money secured by the said mortgage; that the said Greenhut was cognizant of the whole of said transaction and knew of



its bona fides and honesty, as he did of the subsequent bona fide transfer thereof to Alex McGowan, S. J. Foshee, and H. L. Covington for a large consideration paid by them to the said bank, and that the bill filed by the said Greenhut as trustee as aforesaid, was filed to declare the said mortgage and transfer null and void, although the said Greenhut knew them to have been entirely honest, straight, and valid transactions.

"That prior to the said 20th of October said A. Greenhut became indorser upon certain negotiable paper of the said Scarritt Moreno to the said bank to an amount of about \$1,500; that the said Greenhut refused to make good his said indorsement or to pay to the said bank the money due upon said paper at its maturity or thereafter, and before the said 20th day of October the said bank had been compelled to sue him in the circuit court of Escambia County, Fla., upon said paper, and that in the said suit the said Greenhut interposed a defense which this respondent believed and believes to be untrue and known to the said Greenhut to be untrue.

"That on the morning of the 20th of October, 1902, respondent was proceeding from his residence to his office in the said bank, in the direct and usual path pursued by him, and he saw the said Greenhut standing at the door of his said store office upon the said path of respondent, and it suddenly occurred to respondent to reproach the said Greenhut with having brought the suit mentioned in his affidavit against the said bank, when he, the said Greenhut, knew as aforesaid that there was no foundation therefor; and thereupon the respondent stated to the said Greenhut that he wished to speak to him as soon as he was at liberty, he then being engaged in a conversation with one A. Lischkoff. The said Greenhut answered that respondent could speak to him then, and both he and respondent stepped to the rear of the said Greenhut's office, when the respondent reproached the said Greenhut with his attitude toward the bank, of which he had been a stockholder and director, both in his refusal to pay the negotiable paper hereinbefore mentioned and in the bringing of an unfounded suit against it; the conversation, however concerning chiefly the bringing of the said suit against the said bank. Hot words passed between the said respondent and said Greenhut, during which the said Greenhut said that he would 'do respondent up,' to which respondent answered that he did not come to have a disturbance and would not fight in his office except in self-defense, but that if he had to fight he would do so if the said Greenhut would come out upon the street.

"When the respondent turned to leave the office and when he had nearly reached the door, he turned and said to the said Greenhut, 'Well, you know how you lied about the Moreno acceptance, for you said that you would pay it,' the Moreno acceptance being the negotiable paper hereinbefore mentioned. As respondent turned, saying this, he noticed that the said Greenhut was following him, and as he said it the said Greenhut, who was short, stout, heavily built, and apparently much more muscular than respondent, struck the respondent, who is thin and feeble, and forced him against the railing in the said office. The respondent shoved the said Greenhut a little away from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocketknife and opened it, in order to protect himself, and upon said Greenhut rushing upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

"That it is not true that the respondent at any time said to the said Greenhut that he, respondent, would settle the matter, but the facts are as hereinbefore stated; that respondent does not know how many or where located were all the wounds inflicted with said knife and hence he is unable to admit or deny the allegations of the said affidavit relating thereto; that it is not true that the use of the said knife was with the intent to kill and murder the said Greenhut or to do him any bodily harm, but respondent avers that it was entirely from the instinctive desire of respondent to defend himself from the attack of a larger and more powerful man.

"That it is not true that the assault charged in the said affidavit was committed by the respondent solely because and for the reason that the said Greenhut had instituted the suit aforesaid against the said American National Bank, or to interfere with and prevent him, the said Greenhut, from exercising and performing his duties as an officer of this court; that in truth the respondent never contemplated at any time any interference with the said Greenhut as trustee as aforesaid, or contemplated any affray with the said Greenhut, or any personal conflict with him until he saw the threatening attitude of the said Greenhut toward him, the respondent, as hereinbefore set forth, and that so far as respondent can determine from the actions of the said Greenhut, who was the aggressor as aforesaid, the cause of the said affray was the remark of respondent to the said Greenhut concerning the said Greenhut's action in repudiating his obligation to pay the said acceptance.

"And respondent disclaims the existence on his part at any time of any intent to interfere with, prevent, impede, or delay the said Greenhut in the prosecution of the

said suit against the said bank, or to interfere with or impede or prevent him in any-wise in the execution or performance of any of his duties as such trustee, and specially disclaim any intent to do any act which might savor in the slightest degree of contempt of this honorable court.

“W. C. O’NEAL.

“W. C. O’Neal, being duly sworn, says that he has read the foregoing answer and that the statements therein made are true.

“W. C. O’NEAL.

“Sworn and subscribed before me this 18th day of November, A. D. 1902.

[SEAL.]

“JNO. PFEIFFER, *Notary Public*.

“On the 9th day of December the matter came on for trial, and the court, after hearing all of the evidence and all of the witnesses, rendered the following judgment:

“And afterwards, to wit, on the 9th day of December, A. D. 1902, the following proceedings were had in open court, to wit:

“In the matter of the rule upon W. C. O’Neal to show cause why he should not be punished for contempt of this court as to the matters and things set forth in the affidavit of Adolph Greenhut.

“This cause coming on to be heard at this time on the affidavit of Adolph Greenhut, in the matter of the bankruptcy proceedings in the estate of Scarritt Moreno, and upon the rule to show cause why he should not be punished for contempt of this court issued thereon by this court against W. C. O’Neal, and upon the answer of the said respondent, W. C. O’Neal, to the said rule and affidavit, and the court having heard the testimony and the witnesses for the prosecution and for the respondent, and after argument of counsel and consideration by the court, and the court being advised in the premises, the court doth find as follows:

“That the affidavit of Adolph Greenhut, upon which this rule was granted, is true, and that the respondent is guilty of the acts and things set forth therein, in the manner and form therein alleged, and that the same constitute and are a substantial contempt of this court; and it is therefore

“Ordered, adjudged, and directed that the said respondent, W. C. O’Neal, be taken hence to the county jail of Escambia County, at Pensacola, in the State of Florida, and there confined for and during the period of 60 days, and that he stand committed until the term of this sentence be complied with or until he be discharged by due process of law.

“And the said respondent, W. C. O’Neal, at this time having sued out his writ of error to the Supreme Court of the United States, and made and entered into a bond and undertaking, conditioned as required by law, and duly approved by this court, it is therefore ordered that the said writ of error be and operate as a supersedeas to the judgment heretofore rendered in this cause.”

There is no evidence that Judge Swayne acted arbitrarily in the matter, that he was oppressive, or that he wrongfully and willfully in defiance of law tried the action and pronounced judgment. The majority of the committee contend that there is no law to warrant the decision of the court; that no contempt had been committed; that the judge was in error; and for these reasons and because he made a mistake in the law, because he rendered an erroneous judgment, he should be impeached.

The judge certainly had the right to pass on the credibility of the witnesses and certainly had the right to believe Greenhut’s statement in preference to that of O’Neal’s, and if the evidence supported the allegations of Greenhut’s affidavit—and the judge found that it did—then he had the right under the law, in my judgment, to find O’Neal guilty of contempt.

A trustee in bankruptcy, under the bankrupt act, is made an officer of the court. It is his duty, under an order of the court appointing him, to commence any actions necessary to recover property belonging to the bankrupt, and when he commenced such an action he is acting as an officer of the court and under its orders, or he would have no right to commence and prosecute the action at all. And any interference with him, either in the commencement of the action or in its prosecution, is a resistance by a party to a lawful order of the court and clearly falls within the express language and meaning of section 725 of the Revised Statutes. The action of O’Neal was not only to reproach Greenhut, but to frighten and terrorize him and to interfere with him in the lawful discharge of his duties as trustee and as an officer of the court.

Is it possible that the court may direct its trustees and officers to commence an action to recover assets to be distributed by the court to creditors and can not punish for contempt a party who stands in the street 100 yards away from the courthouse and by force of threats intimidates the trustee so that he, through fear of personal violence, dare not

commence his action? Surely such can not be the law, and such is not the law. What are the decisions on this question?

In the case of the *United States v. Anonymous*, reported in volume 21, Federal Reporter, page 761, it is held that "it is a contempt of court to interrupt and violently break up the examination of a witness before an examiner by persisting in the claim to dictate, prompt, and control the answers of the witness. It is also a contempt to insult the examiner by use of violent and abusive language to him after he has left the office and is upon the street. Nothing in the Revised Statutes, section 725, has taken away the power of the court to punish such contempts."

The court, on page 771, uses this very strong language, which applies with great force to the O'Neal case. It says:

"The privilege of protection to all engaged in and about the business of the court from all manner of obstruction to that business, from violence, insult, threats, and disturbance of every character is a very high one, and extends to protect the persons engaged from arrests in civil suits, etc. It arises out of the authority and dignity of the court and may be enforced by a writ of protection, as well as by punishing the offender for contempt."

The court further on says if the misbehavior was not in the presence of the court, or so near thereto as to obstruct the administration of justice, it was nevertheless the disobedience or resistance by a party to a lawful order, decree, or command of the court.

In the case of *In re Higgins*, reported in volume 27, Federal Reporter, page 443, it is held that receivers are sworn officers of the court, and their agents and servants in operating the railway are pro hac vice the officers of the court, and that it is well settled that who unlawfully interferes with property in the possession of the court is guilty of contempt of that court, and it is equally well settled that whoever unlawfully interferes with officers and agents of the court in the full and complete possession and management of property in the custody of the court is guilty of a contempt of the court, and it is immaterial whether this unlawful interference comes in the way of actual violence or by intimidation and threats. To the same effect are the cases of *In re Acker* (66 Fed. Rep., 290), and *In re Tyler* (149 U. S., 181).

One of the most interesting decisions on this question of the power of the court to punish for contempt is by Judge Jones, of Alabama, and reported in volume 120, Federal Reporter, page 130, ex parte McLeod. This case discusses the causes that led up to the enactment of section 725, Revised Statutes. The court holds that "an assault upon a United States commissioner because of past discharge of duty is a contempt of the authority of the court, whose officer the commissioner is, in the administration of criminal laws, although no proceeding against the offender was then pending and the commissioner at the time was not in the performance of any duty."

This must be so. The court must have its officers to enforce and carry out its decrees, to enforce and protect the rights of litigants, to preserve peace and good order, and to assist it in the performance of those duties which are imposed upon it by law. The judge himself is only an officer of the court, and, indeed, the court would be weak that had no power to punish a party for contempt who interfered with one of its officers for the purpose of preventing him from discharging his duty as an officer of the court, as trustees, or receivers. If trustees, commissioners, and other officers of the court are to be deterred in the performance of their duties by reason of violence or threats, if they may be assaulted and stabbed because they are carrying out the mandates of the law, then we will have no law, no order, no security, no protection of person or property.

It is necessary for the peace and good order of the law and of society that a trustee in bankruptcy may, without fear, commence actions in the courts to recover property which belongs to creditors. It is also necessary that after the action has been commenced that he shall not be terrorized to the extent that he dare not prosecute further. His duties are, among other things, to collect and reduce to money the property of the estate for which he is a trustee, under the direction of the court, and there is vested in him title to all of the property belonging to the bankrupt, including property transferred by the bankrupt in fraud of creditors. In trying to declare the deed of Moreno to his wife and the mortgages therein as void in the suit which he commenced, Greenhut was "acting, under the direction of the court," or, in other words, under its order, as its officer; and when Mr. O'Neal went into his office to reproach him for commencing this suit and used violence upon him he was resisting and interfering with an officer of the court in the performance of an order of the court, and was guilty of a contempt. Being guilty of a contempt, Judge Swayne's duty was to punish him therefor, and he would not have been mindful of the peace and good order of his court and the due administration of justice therein if he had not done so.

But the majority contend that "the answer of O'Neal purged the contempt, and it was error to punish him for it," and therefore the judge should be impeached. We can not agree to this for two reasons: First, the answer does not purge the contempt, and, second, growing out of an equity proceeding, the court had the right to inquire into and pass upon the merits.

In proceedings for criminal contempt the answer of the respondent in so far as it contains statements of fact must be taken as true. If false, the Government is remitted to a prosecution for perjury. This is the common-law rule. But the answer must be credible and consistent with itself, and if the respondent states facts which are inconsistent with his avowed purpose and intent the court will be at liberty to draw its own inferences from the facts stated. (In re May, 1 Fed., 737; In re Crossley, 6 Term R.; Ex parte Nowlan, 6 Term R.; U. S. v. Sweeny, 95 Fed., 447; In re Debs, 64 Fed., 724.)

"Disclaimer of intentional disrespect or design to embarrass the due administration of justice is, as a rule, no excuse, especially where the facts constituting the contempt are admitted or where a contempt is clearly apparent from the circumstances surrounding the commission of the act. (Cyclopedia of L. & P., vol. 9, 25.)"

Courts may make inquiry as to the truth of the facts notwithstanding the answer denies fully the allegations of the affidavit, statement, or petition and disclaims any intention to do any act in contempt of the court. (Territory v. Murray, 7 Mont., 251; Crow v. State, 24 Tex., 12; State v. Harper Bridge Co., 16 W. Va., 864; U. S. v. Debs, 64 Fed., 724; In re Snyder, 103 N. Y., 178; 48 Conn., 175; 19 Fed., 678.)

The law as above stated is clearly applicable to the answer filed by O'Neal.

He admits that he knew that Greenhut had been appointed trustee. He admits that he knew that Greenhut as such trustee had commenced an action to recover assets which it was alleged belonged to the bankrupt and which he was endeavoring to cover up by fraud. He admits that the bank of which he was president was a party defendant in this action, and he admits that "it suddenly occurred to him to reproach the said Greenhut with having brought the suit against the said bank." He also admits that when he entered Greenhut's office he reproached the said Greenhut for bringing an unfounded suit against the bank; "the conversation, however, concerning chiefly the bringing of the said suit against the said bank," and that hot words passed between them and that he invited Greenhut into the street to fight. He says "that it is not true that the assault charged in the said affidavit was committed by respondent solely because and for the reason that the said Greenhut had instituted the suit against the said American National Bank, or to interfere with or prevent him, the said Greenhut, from exercising and performing his duties as an officer of this court."

He says that the assault was not made solely for that reason, but he does not deny that that was one of the reasons, and thereby admits that it was.

Having made an affidavit in which he admits so much, the court could well find that it was inconsistent with his claim that he had no intent to commit any contempt or to interfere with Greenhut in discharging his duties as trustee. In fact, nowhere does it appear that O'Neal ever asked to be dismissed because he had fully purged himself of contempt by his answer.

But the action commenced by Greenhut, being an equitable action, and his duties as trustee being more as an officer in equity than one at law, the court had the right to inquire into the merits even if O'Neal filed an affidavit fully and completely purging himself of the contempt charged, a different rule obtaining in equity than at law. (Buck v. Buck, 60 Ill., 105; 114 Mass., 230; 37 N. H., 450; 48 Conn., 175.)

When O'Neal was found guilty of contempt he took a writ of error to the Supreme Court of the United States and the cause was dismissed. Then he sued out a writ of habeas corpus before Judge Pardee, and on the 10th of November last the court, Judges McCormick and Shelby concurring, dismissed the writ. This decision is reported in volume 125, Federal Reporter, page 967.

The court says:

"The charge of contempt against the relator is based upon the fact that he unlawfully assaulted and resisted an officer of the district court in the execution of orders of the court and in the performance of the duties of his office. Under such orders, and in that respect, it would seem to be immaterial whether at the time of the resistance the court was actually in session with a judge present in the district, or whether the place of resistance was 40 or 400 feet from the actual place where the court was actually held, so long as it was not in the actual presence of the court, nor so near thereto as to embarrass the administration of justice.

"Under the bankruptcy act of 1889, section 2, the district courts of the United States, sitting in bankruptcy, are continuously open; and, under section 33, and others of the same act, a trustee in bankruptcy is an officer of the court. The question before the district court in the contempt proceedings was whether or not an assault upon an officer of the court, to wit, a trustee in bankruptcy for an account of and in resistance of the



performance of the duties of such trustee, had been committed by the relator, and, if so, was it under the facts proven a contempt of the court whose officer the trustee was. Unquestionably the district court had jurisdiction summarily to try and determine these questions, and having such jurisdiction, said court was fully authorized to hear and decide and adjudge upon the merits."

If O'Neal was guilty of the matters charged against him, and there was sufficient proof of that fact as shown both by Greenhut's affidavit and his own, then there is no doubt that he was guilty of contempt.

Judge Swayne having been fearless enough on the proof of these facts to find a banker and an influential citizen guilty of contempt, the majority in their report say, on page 20, that "Judge Swayne's action was, to say the least, arbitrary, unjust, and unlawful. It could have proceeded only from either willful disregard of the law or from ignorance of its provisions."

If the court has no power to punish those for contempt who beat, assault, and intimidate its officers when discharging their duty, then what protection have they, and how will the law be enforced? If a sheriff can not serve a process without being beaten, if a clerk can not file a paper without being threatened, if a juror can not proceed to hear a case without interference, and if a trustee can not commence an action without being stabbed, and neither have any right to appeal to the court for protection, then men will not be found who will discharge their duties; and if a judge dare to punish for contempt for the doing of any of these things he lays himself subject to impeachment and to be charged with tyranny, oppression, and ignorance, and his acts characterized as being "arbitrary, unjust, and unlawful."

But the majority in their report in this matter give their whole case away. They say, on pages 20 and 21, "O'Neal did not assault Greenhut because Greenhut had sued the bank, but because he had sued the bank knowing that his contention was false."

Here is an admission that O'Neal did assault the trustee, and that the assault grew out of the action that Greenhut commenced against O'Neal's bank, but the assault is sought to be justified because O'Neal claimed that the suit was an unfounded one and Greenhut knew it. The question of whether or not a suit is well founded is always a question for the court before whom the action is pending. If a defendant has the right to walk into the office of a receiver, trustee, executor, or administrator and stab him and try to cut his throat, and justify his action by claiming that a suit brought against him by such officer is unfounded, then how can the court protect its officers in the discharge of their duties? Happily no such right as this exists under the laws of this or any other civilized nation.

In punishing O'Neal Judge Swayne did his duty. Out of this trouble grew this impeachment proceeding. O'Neal at once started in to get even on the court, and the evidence shows that he employed lawyers to go to Tallahassee and lobby through the resolution passed by the legislature of the State of Florida. The two most prominent lawyers now prosecuting this matter, Mr. Liddon and Mr. Laney, admit that they were employed by O'Neal to lobby this resolution through.

There is considerable feeling of prejudice and malice in this proceeding, and it is well to be careful and not be influenced by it, to the end that no mistakes are made and no injustice done.

BELDEN AND DAVIS.

Third. The majority are of the opinion that Judge Swayne should be impeached because he found one Davis and one Belden guilty of contempt. With this we can not agree; neither can we agree with the statement of facts set forth in Mr. Palmer's report, as important matters are omitted which put a very different phase to the transaction.

The trouble grew out of the following facts: In February, 1901, Florida McGuire commenced an action in Judge Swayne's court to recover about 200 acres of land known as the "Rivas tract." This tract of land is described as one body, though it is divided into lots and blocks and owned by a number of people. On this tract is a block known as block 91 of the new city, but there is nothing in the said description of the tract of land that would show this fact. In the summer of 1901 Judge Swayne's wife was negotiating with a real-estate firm for the purchase of several pieces of land, one of which was said block 91. This block was owned by a Mr. Edgar, who lived in New York, and upon whom service of summons had never been made in the said Florida McGuire suit. Mr. Edgar made a deed in favor of Mrs. Swayne and sent it to Thomas C. Watson & Co., the agents above named. Mr. Hooten in July, 1901, wrote to Judge Swayne that he had received the deed, but it was not a warranty deed, as Edgar was afraid of the Caro claim. To this letter Judge Swayne replied as follows:

"Gentlemen, you may omit block 91 and send papers for the others along, and oblige."



This ended the negotiations of Judge Swayne's wife to purchase said block. Afterwards it was sold to the Pensacola Improvement Co., and neither Judge Swayne nor his wife ever owned it or were ever in possession of it. Before the commencement of the November term of court the attorneys for the plaintiff in the Florida McGuire suit requested Judge Swayne, by letter, to recuse himself, as he owned an interest in the property in dispute. The judge did not answer this letter. On November the 5th, when court opened, the judge brought this matter up in the presence of the attorneys for plaintiff, Florida McGuire, and stated that he had received a letter from them asking him to recuse himself because he had purchased a piece of land which was a part of the land embraced in the Florida McGuire case. (Testimony of W. A. Blount; Mr. Palmer states they had no notice.)

"The judge stated he had not purchased any such land; that his wife through him had negotiated for the purchase of a block of this tract, but when the deed was sent to close the trade he saw it was a quitclaim, and he asked why a warranty deed had not been given. The reply by Watson & Co., Edgar's agents, was the reason a warranty deed was not given was because this land was in controversy in this suit and he did not care to give a warranty. Judge Swayne, learning this, caused the deed to be returned, and as no formal demand had been made of him to recuse himself, he would try the case."

The foregoing is the statement of W. A. Blount, Florida's foremost attorney, who was in the court at that time. The criminal calendar was taken up first, and the court informed the parties that he would take up the civil docket right after the criminal calendar. The only case on the civil docket was the case of Florida McGuire. A jury was in attendance. During the week the attorneys for Florida McGuire informed W. A. Blount, attorney for defendants, that they were ready. All of their witnesses were in Pensacola and easy to reach. Saturday morning it was apparent that the last criminal case would be finished that day, and Mr. Blount took out a subpoena for his witnesses. Again I quote from the testimony of Mr. Blount:

"The first we knew that they would not be ready was the application by Judge Paquet for a postponement of the case to Thursday. I objected very strenuously. I had tried the same issue 11 times. I called the court's attention to the fact that my knowledge of the witnesses and the issues led me to believe that 90 per cent of the witnesses were in half-hour call of the court room; there was no reason for delay. The court took that view, would not call it then, but would call it Monday, unless there was an application for a continuation in accordance with the rule."

That night, Saturday, after the court had refused to postpone the case, Davis, Belden, and Paquet, attorneys for the plaintiff, Florida McGuire, met together in a store of one of their clients, and there discussed the question of suing Judge Swayne and decided to do so. Belden admits he was present at this meeting, though the majority report says, page 8, "The papers were taken to Simeon Belden, into his hotel, where he was ill, and he signed them." The following are the facts as sworn to by Belden:

"A. I was at the Park Hotel a short time, and they sent for me to come down to Judge Paquet.

"Q. Where was he?—A. At Mr. Pryor's store, I think; I went there and signed the papers and left. It was a suit against Judge Swayne for the recovery of that property."

The suit was commenced after 8 o'clock at night in the circuit court of Escambia County, Fla., after the clerk had gone home, and the statement was made to him that the writ must be served that night at all hazards. After the writ was issued the sheriff was hunted up and instructed to serve Judge Swayne with it that evening. These attorneys also, in carrying out their scheme, wrote an article for the paper to be published next morning—Sunday—stating that the suit had been brought and the object of it, and procured its publication.

The majority in their report say that they did not procure its publication, but the evidence is positive that they did. The suit was won in ejectment to recover from Judge Swayne block 91 and mesne profits amounting to \$1,000, and all three of these parties well knew that Judge Swayne had never owned the land and had never been in the possession of it. Judge Belden claimed that the land was Lydia C. Swayne's, and Mr. Davis, in his petition for a writ of habeas corpus, stated the same fact. It was open, unimproved land. The action was not commenced in good faith with the intention of prosecuting it, and nothing more was ever done with it. If the parties had been acting in good faith they certainly would have sued Mrs. Swayne, whom they claimed to be the owner of the land, and not Judge Swayne, who had never negotiated for it. When forced to state what caused them to act in this great haste, they gave as an excuse that they were afraid that Judge Swayne would leave before they

could get service upon him. Monday forenoon Judge Blount talked the matter over with Judge Swayne, and he, acting on his own suggestion, prepared the papers upon which Davis and Belden were found guilty of contempt.

At the trial Judge Swayne said, so states Mr. Blount in his evidence, that he had no doubt that the people in the city had a right to sue him, but the circumstances showed it to be an attempt to influence a United States judge in his duty by putting him where he would have to declare himself disqualified, and knew he had so announced, and had no reason to believe so. Before Davis and Belden were cited for contempt they dismissed the Florida McGuire suit. They probably heard contempt proceedings were being started. They claim now that Saturday evening they had decided to dismiss the case pending before Judge Swayne. But if this is a material fact in the case, it could only have been such by calling Judge Swayne's attention to it at the time of the contempt proceedings, which they did not do. As far as the court knew, no intention of that kind ever existed. It was not sworn to, was not put in their answer, and was mentioned in no way when it ought to have been, and it seems rather late in the day to make that claim now.

Mr. Davis claims that he was not retained in the Florida McGuire suit until Sunday, after the suit against Judge Swayne had been commenced, and the majority in their report say that "E. T. Davis was not of counsel in the case and had no connection with it up to the time that court adjourned on Saturday, November 9, at 6 o'clock." We believe that Davis was retained and was connected with the suit before Judge Swayne was sued, and had been for some time, and the evidence clearly establishes that fact beyond all doubt. J. C. Keyser was interested in the suit on behalf of plaintiff; in fact, he was one of the plaintiffs, though his name did not appear of record. He said, when asked what attorney asked Judge Swayne to recuse himself, "I think Mr. Davis and Gen. Belden."

On page 250 Mr. Marsh, the clerk of the court, says:

"I don't think any præcipes had been gotten out. I had told Mr. Davis I would wait as late as he desired to get them out. He did not seek any præcipes.

"Q. Was Mr. Davis in the case, then, that Sunday afternoon?—A. Yes.

On page 278 Mr. Belden says:

"After receiving the telegram from Judge Pardee, Mr. Davis was to make up the record in the case, so if there was error we could appeal it—take it up by writ of error. We intended to proceed, but the judge calling the case Saturday evening, 9th of November, refusing to allow us time to get our witnesses before the court, we were deprived of the facilities of making up such a record as Judge Pardee contemplated we should make, and we had to discontinue it."

Here is a positive statement by Mr. Belden that Davis was in the case before Swayne was sued:

Mr. Paquet says, page 423, that "Davis was brought into the suit on Saturday, November 9, before Judge Swayne was sued; that he was one of the advising counsel of the clients, that he was associated, and asked if I had any objections; during the week he was in court very frequently, advising with some of the plaintiffs."

Davis also admits in his petition for a writ of habeas corpus that he was an attorney for plaintiffs, a copy of which writ is as follows:

"United States circuit court, fifth judicial circuit, ex parte Elza T. Davis, habeas corpus.

"The relator in this case, Elza T. Davis, comes into court and excepts to the consideration of what is filed herein as a certificate of Charles Swayne, judge, without date, because it contains charges and statements amounting to charges of contempt against this defendant not contained in motion and order charging contempt, and which statements and charges he has never been ordered to answer, or in any way given a chance of reply to.

"Should this exception be overruled then defendant, with permission of court first had and for which he prays, says:

"That on the 5th of November, 1901, in open court of the United States circuit court of the northern district of Florida, Charles Swayne, United States district judge presiding, in answer to a letter from this defendant and Louis P. Paquet, of counsel for Mrs. Florida McGuire, of date October 4, 1901, to said judge at Guyencourt, in the State of Delaware, requesting him to recuse himself on the trial of the suit of Mrs. Florida McGuire v. Pensacola City Co. et al., among other reasons, because of his interest in the said suit pending before him, refused to recuse himself, and went on to state from the bench in open court that a relative of his had purchased a part of the said land in litigation before him in said suit of Mrs. Florida McGuire, that the deeds had been sent north to him (the judge), and that he had returned them.

"Second. In the second paragraph of the judge's certificate he mentions the desire of his wife to purchase block 91, being the block that he is sued for in the State court, but he has not stated as fully as he did in open court on the 11th of this month the facts in reference to said purchase. On said date, 11th November, 1901, said judge stated in the hearing of all present, this relator and Simeon Belden, also counsel for Mrs. McGuire being present, that the relative referred to in his statement from the bench in open court on the 5th of November 'is his wife;' that she purchased said block of ground on the Rivas tract with her own money; that finding that it was on the 'Rivas' tract in litigation before him he returned the deed. At no time has he ever stated or furnished us any proof that said sale had been resolved at his request or by his wife's vendor, or that his wife, who purchased the same with her own money, desired it canceled.

"Third. In paragraph 5 in said judge's certificate the facts in reference to trial of suit of Florida McGuire v. Pensacola City Co. et al., the material facts are suppressed. They are as follows: The criminal term of said court ended Saturday, late in the evening of November 9, when said judge announced that he would take up the trial of the McGuire case the following Monday at 10 o'clock a. m. The case had never been fixed for a day to which we could have our witnesses summoned, and we therefore asked the court to allow us until the following Thursday to get our evidence in the case. The judge seemed willing, but counsel for defendant, W. A. Blount, and who is also one of the defendants in the McGuire suit, which is an ejectment suit, with much warmth insisted on the trial on Monday, November 11, to which the judge acquiesced.

"This was Saturday, 9th, after office hours; next day being Sunday, no summons for witnesses could issue, thus having only from the opening of clerk's office at 9 o'clock Monday, 11th, until 10 o'clock, opening of court (one hour) to issue summons and serve more than 50 witnesses, which was physically impossible. While we were satisfied that said judge is interested in the result of said suit, still he refused to recuse himself, our intention was to try the case before him had he fixed a day for trial so that we could have secured our evidence thereto and made our record, but when thus arbitrarily cut off therefrom our duty to our clients was to discontinue the suit to prove their rights, which discontinuance of said suit, upon motion, was ordered by Judge Swayne at 10 o'clock on the morning of November 11, 1901, and after which the motion of rule for contempt was inaugurated by W. A. Blount, attorney, and a defendant.

"Fourth. In paragraph 7 of said certificate said judge refers to consultation with some members of the bar, but does not name them, but finally selects W. A. Blount to call the matter of contempt before the court, assisted by W. Fisher, of whom are defendants in the suit of Mrs. McGuire v. Pensacola City Co. et al., and trespassers on a large portion of the land in question. Now, while there is no act charged against us which under the law we were not entitled to do, still we make reply to statements and certificates, to place it beyond doubt, that we have acted strictly within the line of our sworn duty to our clients, which we have a right to do under the law, and there can be no contempt, and no contempt was ever intended or thought of, in suing Charles Swayne in a State court, and especially is it so demonstrated by a discontinuance of suit in Federal court.

. "OATH.

"Elza T. Davis, being duly sworn, deposes and says that all the facts and allegations recited in the foregoing exception and statement are true and correct, to the best of his knowledge and belief.

"E. T. DAVIS.

"Sworn to and subscribed before me this 23d of November, 1901, at the city of New Orleans, La.

[SEAL.]

"BENJAMIN ORY,

*"Notary Public for the Parish of Orleans, La.*

"(Indorsed:) United States circuit court, fifth judicial circuit, northern district of Florida, ex parte Elza T. Davis applying for writ of habeas corpus. Exceptions and statement of relator received and filed November 23, 1901. H. J. Carter, clerk. Filed December 10, 1901. F. W. Marsh, clerk.

"NORTHERN DISTRICT OF FLORIDA, ss:

"I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing is a true and correct copy of a certain paper filed in the matter of the application of E. T. Davis for a writ of habeas corpus, in the said circuit court, as the same remains of record and on file in said court.

"Witness my hand and the seal of said court at the city of Pensacola, in said district, this 24th day of February, A. D. 1904.

"F. W. MARSH, Clerk."

A petition in the same language was prepared, sworn to, and filed by Mr. Belden.

There can be no doubt from this positive evidence, that Mr. Davis was an attorney in the case when he commenced the action against Judge Swayne, and that he knew Judge Swayne had no interest in the land can not be doubted, and the finding to the contrary by the majority is not supported by a preponderance of evidence.

The following is the record in the case of Simeon Belden, and the record of Mr. Davis is just the same:

**"THE UNITED STATES AGAINST SIMEON BELDEN.**

"Be it remembered that on the 11th day of November, A. D. 1901, at a term of the United States circuit court in and for the northern district of Florida, the following motion was made in open court and entered of record, to wit:

"And now comes W. A. Blount, an attorney and counselor at law of this court, and practicing therein, and as amicus curiæ, and moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court at a day and hour to be fixed by the court, why they shall not be punished for contempt of the court in causing and procuring, as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91, in the Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then pending in this court in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Co. et al. were defendants, upon the grounds:

"1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of Mrs. Florida McGuire v. Pensacola City Co. et al. had been submitted to the court on November 5, 1901, and denied, and after the said judge had stated in open court and in the presence of the said counsel, Simeon Belden and Louis Paquet, that an allegation of the said petition, that he or some member of his family were interested in or owned property in said tract, was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract, because the said suit of Florida McGuire, involving the title to the said tract, was in litigation before him, the said judge.

"2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part of the said tract and had no reason whatever to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely occupied.

"3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of the said attorneys to postpone the trial of the case of Florida McGuire v. Pensacola City Co. et al. for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

"4. That the said E. T. Davis was, before the instituting of the said suit against the judge, cognizant of all the facts herein set forth.

"W. A. BLOUNT,  
"An Attorney of this Court.

"NOVEMBER 11, 1901.

"And afterwards, and on the same day, to wit, on the 11th day of November, A. D. 1901, the following order was made and entered of record in the said cause, to wit:

"In re matter of contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

"Upon reading the motion of W. A. Blount, an attorney and counselor of this court, for a citation to Simeon Belden, Louis Paquet, and E. T. Davis why they should be committed for contempt, for the reason set forth in said motion, and after consideration of the same, it is ordered:

"That the said Simeon Belden, Louis Paquet, and E. T. Davis be, and they are hereby, cited to appear before me, Charles Swayne, judge of this court, at 10 o'clock, on Tuesday, November 12, 1901, to show cause why they should not be punished for contempt upon the grounds and for the reasons set forth in the said motion, which is now of record in the records of said court, and a copy of which is to be attached by the clerk to the copy of this order served upon the said Simeon Belden, Louis Paquet, and E. T. Davis.

"Ordered in open court this 11th day of November, A. D. 1901.

"CHAS. SWAYNE, Judge.



"At the time of the presentation of the said motion by the said W. A. Blount, in open court, on November 11, 1901, the said Simeon Belden and the said E. T. Davis were present in the said court, and before making said order the said judge made and directed to be spread upon the minutes the following declaration concerning his connection with the land in the Cheveaux tract, mentioned in said motion, to wit:

"On Tuesday, November 5, 1901, at the time of the presentation of the said motion by plaintiffs, that the court recuse himself, he had then stated, and now states, that he never agreed to accept nor ever accepted any deed to any portion of the said Cheveaux tract; that, as he stated, a member of his family, to wit, his wife, had, with money inherited by her from her father's estate, negotiated for the purchase of some city lots in Pensacola; that certain deeds in connection therewith had been sent to her in Delaware, one of them proving to be a quitclaim deed, and upon investigation and inquiry it was found that the property in this deed was a portion of the property in litigation in the suit of *Florida McGuire v. Pensacola City Co. et al.*, and that thereupon, and by his advice, the said deed was returned to the proposed grantors, with the statement that no further negotiations whatever could be conducted by them in relation to this property, and they thereupon refused to purchase, either at the present time or in the future, any portion of the said tract.

"W. A. Blount, an attorney and counselor at law of this court and practicing therein, and as *amicus curiæ*, moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court, at a day and hour to be fixed by the court, why they should not be punished for contempt of this court in causing and procuring as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment wherein *Florida McGuire* was plaintiff and the Hon. Charles Swayne was defendant, to be issued from said court and served upon the said judge of this court, to recover the possession of block 91, Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then pending in this court in a case wherein the said *Florida McGuire* was plaintiff and the *Pensacola City Co. et al.* were defendants upon the grounds:

"1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of *Florida McGuire v. Pensacola City Co. et al.* had been submitted to the court on November 5, 1901, and denied, and after the said judge had said in open court and in the presence of the said counselors, Simeon Belden and Louis Paquet, that the allegation of the said petition that he, or some member of his family, were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract because the said suit by *Florida McGuire*, involving the title to the said tract, was in litigation before him, the said judge.

"2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part whatever of the said tract and had no reason to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

"3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of said attorneys to postpone the trial of the said case of *Florida McGuire v. Pensacola City Co. et al.* for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

"4. That the said E. T. Davis was, before the instituting of the said suit against the said judge, cognizant of all the facts herein set forth.

"(Indorsements:) In re contempt proceedings *Simeon Belden, E. T. Davis, and Louis Paquet*. Filed November 11, 1901. F. W. Marsh, clerk.

"(Marshal's return:) United States of America, northern district of Florida, ss. I hereby certify that I served the annexed citation on the therein-named *Simeon Belden* and *E. T. Davis*, the within-named *Louis Paquet* not found, being outside the northern district of Florida, by banding to and leaving a true and correct copy thereof with *Simeon Belden* and *E. T. Davis* personally, at Pensacola, Escambia County, in said district, on the 11th day of November, A. D. 1901. T. F. McGourin, United States marshal. By R. P. Wharton, deputy.

"And thereafter, to wit, on the 12th day of November, A. D. 1901, the following answer was made and entered in the said cause by the said defendants therein, to wit:



"Before the Hon. Charles Swayne, judge circuit court United States, northern district of Florida. In re matter of the contempt proceedings against Simeon Belden. Louis Paquet, and E. T. Davis.

"And now comes Simeon Belden and E. T. Davis, and for reasons why they should not be punished for contempt, sheweth:

"First. That the general grounds upon which the said contempt is based, to wit, summons in ejectment issued from the circuit court of Escambia County, Fla., wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, that said proceedings is in the jurisdiction of the circuit court of Escambia County, Fla., and that this court is without jurisdiction thereof.

"Second. That the petition to recuse referred to in said motion they had nothing to do with before this court, nor were they present on the 5th day of November when submitted, as stated in said motion, nor present when any statement made by the judge concerning his connection with any of the property, except the statement made by said judge on November 11, after court convened and after the motion to discontinue the case of Florida McGuire v. Pensacola City Co. et al. was made.

"Third. To the second paragraph sheweth: As above stated, they heard no declaration made by the judge referred to in said paragraph, and as for reasons to believe that he, Judge Swayne, or some member of his family, was interested in block 91, Rivas tract of land, named in said summons, we simply refer to the declaration made by Hon. Charles Swayne on November 11, 1901, when said motion was made by the Hon. W. A. Blount, and that after hearing said declaration believe there is in existence a deed to Mrs. Charles Swayne uncanceled, and that they have no knowledge of its repudiation, and as the negotiations for the property named in said deed was one made by Mrs. Charles Swayne in her individual right that no act of the said Hon. Charles Swayne would repudiate or render null and void any transaction made by Mrs. Charles Swayne with her own money or property.

"Fourth. That E. T. Davis, for himself, sheweth that this court had no jurisdiction over him in said matter of Florida McGuire v. Pensacola City Co. et al. until he requested the court to mark his name as attorney for plaintiff on the morning of November 11, when he presented the motion to discontinue the aforesaid suit.

"SIMEON BELDEN.

"E. T. DAVIS.

"(Indorsements:) Before the Hon. Charles Swayne, judge of the circuit court of the United States for the northern district of Florida, at Pensacola. In re contempt against Simeon Belden, Louis Paquet, and E. T. Davis. Filed November 12, 1901. F. W. Marsh, clerk.

"And afterwards, to wit, on the same day, November 12, 1901, the following proceedings were had in open court, to wit:

"The United States v. Simeon Belden. No. 249. Contempt of court.

"This cause coming on to be heard on the motion of W. A. Blount, attorney and counselor at law of this court, as amicus curiæ, to cite the said Simeon Belden to show cause why he should not be punished for contempt of this court for the reasons in said motion distinctly alleged, and on the rule granted on said motion, dated November 11, 1901, a certified copy of which has been duly served on said Simeon Belden, and on the answer to said rule on this day read and filed in open court by and on behalf of the said Simeon Belden; and after hearing the testimony of the witnesses introduced by the United States and by the said defendant, and after duly considering the same:

"It is now ordered and adjudged that the said Simeon Belden is guilty in manner and form as in said motion and rule set forth of the facts therein alleged; and it is further adjudged that the same constitutes a substantial contempt of the dignity and good order of this court.

"Wherefore it is ordered and adjudged that the said Simeon Belden do pay a fine or penalty to the United States Government of \$100, and that he be taken hence to the county jail of Escambia County, Fla., at Pensacola, there confined for and during the term and period of ten days from the 12th day of November, 1901, and that he stand committed until the terms of this sentence be complied with or until he be discharged by due course of law.

"Ordered and done this 12th day of November, A. D. 1901.

"CHAS. SWAYNE, Judge."

At the hearing witnesses were examined, but their testimony is not furnished us, and all we have is a short statement by Mr. Blount of what took place.

In the absence of any of the testimony taken at the hearing we have no right to assume that the allegations of the statement filed charging the contempt were not proven, or that the evidence was not sufficient to warrant the finding of the court that a contempt had been committed. On the contrary, the presumption is that they were and that the evidence was sufficient to warrant and support the judgment of contempt entered by the court.

Mr. Belden and Mr. Davis were attorneys of Judge Swayne's court, and were both attorneys in the case of Florida McGuire, pending in his court. When they requested the judge to recuse himself because he owned a part of the property involved in the litigation they were informed by the judge that he owned no interest whatever in this land and they must have known that he did not. The slightest inquiry on their part would have disclosed this fact, and they admit if anyone owned an interest it was Mrs. Swayne. On Saturday the court informed them that on Monday he would proceed with the case; they desired a postponement until Thursday. A jury was in attendance, and there was no reason why the case should be postponed for that length of time. The witnesses were all within a half an hour call of the courthouse, and the parties had all week in which to get ready.

The court said he would proceed with the trial Monday morning unless they made a motion for continuance under the rule, and they said they would do so, and at that time they had in their mind what they afterwards did. Now, what followed? Paquet, Davis, and Belden in the evening met in the grocery store of one of the plaintiffs and consulted what course to take. It was decided to bring an action against Judge Swayne individually, to oust him from a portion of the land embraced within this litigation and for \$1,000 mesne profits, when they all well knew, and must have known, that he had never been in the possession of the land and never owned it. They went to the clerk's office, got him to go to the courthouse and file the suit. Then the sheriff was found and he was instructed to serve the papers at all hazards that night. They were not satisfied with this, but they wanted to give the suit publicity. They wanted to advertise to the world that Judge Swayne was intending to try the question of title to property in which he owned an interest, and, following this out, prepared a statement of the case and gave it to the morning paper to be published, which was done.

The only excuse they have yet been able to give for this unseemly haste is that they wanted Swayne served before he left the State, a most flimsy and unreasonable excuse. There is only one conclusion that a fair and reasonable mind can draw from all of these facts, and that is, they wanted, desired, and expected, by bringing a fictitious suit, to force Judge Swayne to recuse himself and continue the action. They wanted to so embarrass him that though not disqualified he would refuse to hear the action, and if this conclusion is true there can be no doubt, as attorneys and officers of the court, they were guilty of gross misbehavior, and clearly were guilty of contempt within the meaning of section 725 of the Revised Statutes.

It is true that Judge Swayne, for this contempt, imposed both fine and imprisonment, but this error of law was corrected by Judge Pardee, and surely it can afford no reason for impeachment. Belden and Davis say his manner in passing judgment was harsh and abusive, but all Davis can remember that was said is that the court charged them with ignorance and that their actions were a stench in the nostrils of the community.

This last remark must be very doubtful. But if they were guilty of what they stood charged, if they had collusively and in bad faith commenced this action to interfere with the trial of the case by Judge Swayne and prevent the defendants from securing a speedy trial before the judge of the court, then they were guilty of contempt, and this contempt was not purged by coming in later and dismissing the suit or by the judge using toward them harsh and abusive language.

Mr. Davis sued out a writ of habeas corpus before Judge Pardee. At the hearing Judges McCormick and Shelby sat with him and concurred in his opinion.

The court says:

"The relator is an attorney and counselor of the United States circuit court for the northern district of Florida, and, as such, one of the officers of the court, within the intent and meaning of the above statute. As such officer he was and is charged with conduct in and out of court which, if accompanied with malicious intent, or if it had the effect to embarrass and obstruct the administration of justice, was such misbehavior as amounted to contempt of court."

The writ of habeas corpus was discharged. There is no doubt that this suit was brought with no intention to ever try it. In fact it was dropped. And there can be no other conclusion but that the commencement of this action could have no other

effect than to embarrass and obstruct the administration of justice. The fact that the suit was commenced in the State court can make no difference, because its effect, as intended was to embarrass Judge Swayne in trying the action pending before him in the United States court.

Plaintiffs dismissed the suit, but in a few months commenced it again in Judge Swayne's court, which fact shows that when they dismissed it first they had no intention to abandon it.

But the majority find fault and lay great stress upon the fact that, in his judgment, finding Belden and Davis guilty of contempt, he does not, in the language of the statute, find them guilty of misbehavior as officers of his court, but adjudged that their conduct constituted a substantial contempt of the dignity and good order of the court. And is it not true that a misbehavior of an attorney is a contempt of the dignity and good order of the court?

To embarrass the court in the administration of justice surely must be a contempt of the orderly conduct of the court in its business.

In discussing Judge Swayne's action in passing judgment of contempt against Belden and Davis, the majority show considerable feeling. The committee charge that he was "guilty of gross abuse of judicial power and misbehavior in office," and that knowing the law, and knowing that no contempt had been committed, he, with a bad and evil intent, declared them guilty. This is making a very broad accusation when we consider all of the facts and surrounding circumstances and the law controlling the same.

The committee say that Judge Swayne "knew that proceedings for a contempt not committed in the presence of the court must be founded on an affidavit setting forth the facts and circumstances constituting the alleged contempt," and "knew that issuing of process without filing was erroneous," and "knowing the law, Judge Swayne issued a rule to show cause why Davis and Belden should not be committed for contempt upon an unsworn statement of Mr. W. A. Blount."

Now, it is to be hoped that the House will not vote to impeach any one for a mistake of law or ignorance of it, for if such a precedent is established none of us will be safe. It might be possible that Judge Swayne did not know the law as stated above, and it might be possible that such is not the law. It is true that the committee cite one California and two Indiana cases, but in California the Code of Civil Procedure provides that a contempt committed out of the presence of the court can only be called to its attention by affidavit, and no doubt Indiana has a similar statute.

There is no settled practice in contempt proceedings. (*United States v. Sweeney*, 95 Fed., 446.) In volume 9, page 38, of the *Cyclopedia of Law and Procedure* we find the law stated as follows:

"As a rule the proceeding to punish for contempt committed out of the presence of the court should be instituted by a statement or some writing or affidavit presented to the court setting forth the facts."

Numerous authorities from all over the United States are cited to support this proposition of law.

And it has been held that in such a case the court may even act of its own motion and make the accusation. (24 W. Va., 416; 81 Mich., 592; 27 How. Prac., 14.)

It might have been possible that Judge Swayne did not know of the decision in California or the statutes of Indiana, but followed the rule as stated above.

It is claimed that Davis and Belden purged themselves of contempt. The law on this question has already been given, and it is not necessary to report it again. The affidavit or answers filed by Davis and Belden were not broad enough under the rule, and Belden said, when asked a question at the hearing, that he did not purge himself and would not do it. But look at the matter seriously from the facts and circumstances that existed at the time judgment was pronounced.

The majority report proceeded on the theory that the action was commenced in good faith and upon substantial grounds; that having commenced the action in the State court no contempt could have been committed against the Federal court. If attorneys, who are officers of the Federal court, to embarrass the judge of that court in the administration of justice, commence an unmeritorious action in the State court against him, is it not contempt? Is there any law by which the place in which the contempt has been committed excuses it? Was the action brought in good faith? No; for this reason: Belden, Davis, and Paquet are all good lawyers; they knew that Mrs. Swayne was buying the land; they knew that the deed had been made in her favor, and therefore they knew that if the title had ever left Edgar it vested in her. Being lawyers, they must have known that if the title was in her no judgment against Judge Swayne individually would divest her of that title, and therefore such a judgment would avail their clients nothing. If they were acting in good faith for the purpose of trying title to land,

knowing all of the facts just stated, they certainly would have sued Mrs. Swayne as the owner of the land and joined her husband with her.

Belden says:

"It was so positive she had purchased it.

"Q. Did you have any reason to suppose Judge Swayne had exercised any acts of ownership?—A. No.

"Q. Did you have any such information before you brought the suit?—A. I did not. When we learned that suit was pending in the county judge's court against Edgar that revealed the fact that sale had been made to Mrs. Lydia C. Swayne."

Commencing an action against Judge Swayne alone after he had stated that he would proceed with the trial of the case unless they made a motion to continue it under the rule, and they having stated they would do so, is very suspicious, and is made more so when they never did anything further with the suit. There can be no doubt that they were acting in bad faith. There can be no doubt of their motives and what they sought to accomplish. Why was it necessary to proceed with such haste? Why was it necessary to find the clerk and sheriff that Saturday night and cause one to file the papers and the other to serve them? If they intended to dismiss the suit Monday morning, as they now claim, why did they not wait until Monday and commence the suit after the other action had been dismissed? Why was it necessary to prepare an article for the paper and procure its publication that night?

There can only be one answer to all these questions, one explanation of their conduct—that it was their intention to carry out the statement made to the court that they would show grounds for a continuance Monday morning. There can be no other sane reason; no other reason can explain their conduct. All of this was done to embarrass the court in the trial of the case pending before him. They were seeking to force him to recuse himself, or, if he persisted in trying the case, to do so in the face of the charge, made public by the press, that he was, as judge, trying title to a piece of land in which he owned an interest. Where is the court in the land that would permit such conduct as this to pass unnoticed and unchallenged? Did not Judge Swayne, under all these circumstances, have the right to inquire into this matter and punish the parties if guilty? And having committed the contempt, could they purge themselves by dismissing the action? The contempt was committed Saturday evening, for which they could have been punished then, and can it be seriously urged now that dismissing the action, perhaps because of what they had done, that they stood innocent of any wrong when their trial took place? Such a contention can have no support in reason. The judge did his duty as he saw it, and the facts certainly warranted his belief. This seems to be a very slim charge on which to impeach a Federal judge. There were certainly good grounds for his action, and he had the right, from all the peculiar facts and circumstances, to believe a contempt had been committed.

After the hearing was closed the following papers filed in the contempt proceedings of Belden and Davis were received, and the same are hereby embodied in this report.

The following is a copy of the newspaper article which it is alleged Belden, Davis, and Paquet prepared and procured to be published:

**"JUDGE SWAYNE SUMMONED AS PARTY TO THE SUIT IN CASE OF FLORIDA M'GUIRE V. PENSACOLA COMPANY ET AL.**

"A decided new move was made in the now celebrated case of Mrs. Florida McGuire, who is the owner by inheritance and claims the possession of what is known as the 'Rivas tract,' in the eastern portion of the city, near Bayou Texas, by the filing of a præcipe for summons, through her attorneys, ex-Attorney General Simeon Belden. Judge Louis P. Paquet, of New Orleans, and E. T. Davis, of this city, in the circuit court of Escambia County, in an ejectment proceedings for possession of block 91, as per map of T. C. Watson, which as part of the property which is claimed by Mrs. Florida McGuire, and which is alleged that Judge Swayne purchased from a real estate agent in this city during the summer months, and which is a part of the property now in litigation before him.

"The summons was placed in the hands of Sheriff Smith late last night for service.

"Filed November 12, 1901.

**"F. W. MARSH, Clerk."**

The following is a copy of a statement filed by Louis P. Paquet in Judge Swayne's court, and connected with the commencement of the action against Judge Swayne by himself, Belden, and Davis in the State court of Florida, referred to in the foregoing newspaper article:



“United States circuit court, northern district of Florida, at Pensacola.—In the matter of contempt proceedings against Louis P. Paquet.

“Now comes Louis P. Paquet, respondent in the above-entitled matter, and says:

“That upon full and mature consideration of his actions and conduct in the matter referred to in the motion, made as the basis of the above-entitled proceedings, through excessive zeal in behalf of his clients, he did so act that this honorable court was justified in believing that the said actions were committed in contempt thereof and as showing disrespect therefor. That respondent regrets exceedingly the course taken by him in this matter, and now appears in court and requests that he be permitted to apologize for his behavior and file with the records in the above-entitled cause this paper.

LOUIS P. PAQUET, *Respondent*.

“Filed March 31, 1902.

“F. W. MARSH, *Clerk*.”

The contempt proceedings against Mr. Paquet were dropped.

#### HOSKINS CASE.

Fourth. The majority contend that Judge Swayne should be impeached because he refused to proceed to trial in the W. H. Hoskins bankruptcy proceeding, when the attorneys for the petitioners were asking for a continuance for two weeks in which to secure certain evidence.

I find the facts of this case to be as follows:

On February 10, 1902, an involuntary petition in bankruptcy was filed in Judge Swayne's court against W. H. Hoskins.

On February 24, B. S. Liddon appeared in said matter on behalf of said Hoskins and demurred to the petition. On the 24th of February, John M. Calhoun was appointed receiver and on the 25th gave the usual bond, which was approved on the 26th.

On the 27th of February the court sustained the demurrer to the petition, one of the grounds being that the petition was not verified as required by law, and also that the petition did not set forth if the petitioning creditors were firms, partnerships, or corporations, and gave petitioners ten days in which to amend their petition. After that, and in fact before this date, B. S. Liddon, the bankrupt's attorney, and who appears in this proceeding as the chief counsel for the prosecution, commenced industriously to get creditors to withdraw their petitions and claims, and, it is alleged, made misrepresentations and threats to secure affidavits from petitioners and to cause them to withdraw their claims, so as to defeat the bankrupt proceedings pending before the court, which facts are set forth in affidavits filed in the cause by J. W. Calhoun and J. Hartsfield; and in the case of Hartsfield it is stated that he signed the affidavit through fear of Hoskins and one Justice, and that notwithstanding the petition he signed he desires the proceedings to go forward.

The court on motion extended the time to file an amended petition to March 9, and on March 22 W. H. Hoskins filed his answer thereto. On March 20, Hoskins, having given a bond in the sum of \$5,000, had his property all turned over to him by the receiver, and he took the possession thereof and continued his business. On the 5th day of March, 1902, Charles D. Hoskins, son of the said alleged bankrupt, at the suggestion of his father to get a certain book, made an assault upon one J. N. Richardson, the deputy of the receiver; pulled him out of his buggy, beat him violently, causing the said Richardson, who was an old man, to remain in his bed for some time, and took from him the book; that this book was a book taken by the receiver from the place where the bankrupt Hoskins carried on his business, and which it was alleged by the receiver, upon information and belief, belonged to the alleged bankrupt and contained his accounts. For this assault upon Mr. Richardson, an officer of the court, Judge Swayne issued a rule for C. D. Hoskins to appear before the court and show cause why he should not be punished for contempt. Hoskins concealed himself, was never served and never appeared before the court and never surrendered the book.

On March 24 or 25 the cause was set down for trial to take place on the 31st. Mr. Hoskins contended that he was solvent and could meet all his obligations and was ready and willing to do so, which was a fact. But he, through his attorney, refused to pay one cent of costs, and here is where all the trouble arose. Had he been willing to arrange for the payment of the costs everything could have been settled and dismissed at once without any trial. He never requested the court to fix the amount of costs, because he refused to pay any at all.

Considerable cost had been incurred, the United States marshal alone having a bill of \$304 for taking care of property and feeding stock. On the morning of March 31 the attorneys for petitioners requested the court to continue the case for two weeks, as



they could not safely proceed to trial without the book, which they were informed and believed contained material evidence, and which C. D. Hoskins had by force and violence taken from the custody of the receiver, and which he refused to return.

This motion was resisted by the bankrupt, he contending that he was ready for trial, that the book was not his and that he could prove by witnesses present that the book was not his. He also claimed that he had no control over the book. Judge Swayne, notwithstanding this offer, refused to hear the evidence; said he would not believe his brother under the circumstances, and insisted he would continue the case until the book was produced. The majority condemn Judge Swayne for his conduct and contend that he should be impeached for it. The case had only been at issue five or six days; all of the property was then in the possession of the bankrupt and not under expense. He had full control of his business. Also many things had come to the attention of the court in this matter besides taking the book that might well cause him to proceed with caution, to doubt the honesty of the bankrupt, and to believe that the book contained material matters and which the court should know.

Petitioning creditors had been requested to withdraw their claims, some had been threatened, and the deputy of the receiver had been assaulted in a most brutal manner and a book taken from his possession which it was alleged contained the accounts of the bankrupt. Under all of these circumstances it can not be said the court did not act with due discretion when the case was continued.

The right to continue a case rests always in the discretion of the judge. He did not deny Hoskins a trial; he did no act which injured him in his rights. Hoskins already was in the possession of his property, and the judge was ready to try the case and did offer to try it in June, but the parties had stipulated to try it in the following November, showing there was no hurry about a trial. It never was tried, but was settled, the bankrupt agreeing to pay part of the costs, and in fact the question of costs was all there was in the case and all that kept it from being settled in March.

The majority lay great stress on the fact that some lawyers had entered into a conspiracy to ruin Hoskins and plunder his estate. If this should be true the court was not a party to it, and it was never brought to his notice. The judge acted absolutely in good faith, and there is no evidence whatever that he lent himself to any conspiracy.

The attorneys on both sides are not to be commended for their conduct in this matter, and surely what they did or what they desired to do can not be used as a basis to impeach the judge, especially when he was ignorant of it all. He sustained the demurrer; he released the property; he was willing to try the case and came to Pensacola in June to do so, and did not do so from the fact that these parties, who were so desirous for a speedy trial to the end that they would not be ruined in their property and credit, had entered into a written stipulation that the case should be tried at the November term.

This is the Hoskins's case, as it appears from the record, and for the judge's conduct in this case this committee is asked to impeach him. Still, if he is to be impeached, the grounds for doing so in this particular case are just as good and substantial as in any other instance presented by the prosecutors of the resolution. Liddon, who is the chief prosecutor in this action, was trying to force matters and was also interfering with the clients of the creditors' attorneys. The creditors wanted a book produced in court that Hoskins told his son to take from the receiver. The books must have been in Hoskins's control, and were the best evidence of what they contained. Had the books been produced for the inspection of the court there would have been no trouble or delay, and this, no doubt, Hoskins could have done. Under the circumstances the court could well have granted the continuance asked, and there was no abuse of discretion in doing so. Hoskins could not have been injured by reason of this continuance, because he had all of his property in his possession, was carrying on his business, and was suffering no loss. In fact, he agreed to postpone the trial until the following November, notwithstanding that the court was willing to try it earlier, which alone is a strong reason that no injury was done to Hoskins.

#### TUNISON CASE.

They say Judge Swayne appointed one B. C. Tunison a United States commissioner after Tunison had been impeached in his court. Tunison was a commissioner in 1892 or 1893. He claimed to have been shot by one Humphreys and caused his arrest. Humphreys was tried in 1892 or 1893, and the trial was a bitter one. Tunison was impeached at that time. Tunison is one of the ablest lawyers in Florida and is so conceded. He discharged the duties as United States commissioner well and without complaint. He had the very best citizens of Pensacola for his clients and as his friends.

In 1897 the entire bar of Pensacola indorsed him for United States district attorney for the northern district of Florida. At the same time many of the best and most

prominent citizens wrote letters in his behalf. After this indorsement by the bar in 1897 his term expired and he was reappointed by Judge Swayne. Most of those who impeached him were his enemies. His friends said his reputation as a citizen was good. His enemies spoke ill of him, and his friends spoke well of him, but no charge was ever made against him for neglect or wrongdoing in his official duties, and he has been commended for the able and efficient manner in which he discharged them. But it is said that it is reported in Florida that Tunison has and exercises an undue influence over the court, so that, as generally understood, to win in Judge Swayne's court you must employ Tunison.

There is no evidence that this rumor ever came to the attention of Judge Swayne or that it is well founded. There is no instance shown wherein Judge Swayne ever granted any favor to Tunison. There is nothing to prove that at any time, or in any proceeding, Judge Swayne was corruptly or otherwise influenced by Tunison. But this charge caused an examination of the records to be made, and it appeared therefrom that out of 18 cases tried by Mr. Tunison before Judge Swayne he lost 12. And to further show that this charge is untrue—that is, that Tunison has influence with the court—I only have to call the attention of the committee to the instance where Tunison was employed to see Judge Swayne and induce him to dismiss the charge for contempt against C. D. Hoskins for assaulting and cruelly beating an officer of the court, and the judge's refusal to do so until Hoskins, who had been evading the officers of the law, should present himself before the court.

It is not an uncommon thing to hear that an attorney has influence with a judge, and some go so far as to state that it is a corrupt influence; but never before now did I hear it seriously contended that because of such a rumor, of which the judge had no knowledge and which is unfounded in fact, the judge should be impeached and removed from office.

This ground for impeachment demonstrates one thing, and that is the animus behind this entire proceeding is to impeach Judge Swayne at any hazards. A number of witnesses, many enemies of the court, or in the pay of O'Neal, go on the witness stand and swear to a rumor which they have heard, to wit, that Tunison exercises an undue influence over Judge Swayne, and without any evidence showing such to be the fact, without the showing of a single instance in which the court ever favored Tunison or decided a case in his favor wrongfully, without showing that the judge ever acted corruptly or ever knew of such rumor, the majority of the committee present this as a ground for impeachment, and as a companion piece to this ground present another equally as unfounded in the contempt proceedings instituted against C. D. Hoskins.

#### CASE OF C. D. HOSKINS.

When the members of the subcommittee met to disagree, it was then agreed by us all that there was nothing in the charges concerning the contempt proceedings preferred against C. D. Hoskins which would warrant any impeachment, but I see that Mr. Palmer has now embraced the same within his report, and I am glad that he has, as it will show the Members of the House the character of charges preferred and how unwarranted they are.

On the 5th day of March, 1902, C. D. Hoskins, a young man, assaulted a Mr. Richardson, who was a deputy of the receiver appointed in the Hoskins bankruptcy proceeding, dragged him out of his buggy, brutally beat him, and took from him a certain book or ledger, which it was alleged belonged to said bankrupt and contained accounts of his business transactions. Young Hoskins claimed that the book belonged to him. Mr. Richardson was an old man, and the beating was so severe that he was confined, because thereof, to his bed for several weeks.

The matter was brought to the attention of Judge Swayne by an affidavit filed for the purpose of commencing contempt proceedings against young Hoskins. The affidavit was in proper form and stated sufficient facts to justify the court in granting a rule for the attachment of young Hoskins to show cause why he should not be punished for contempt. Young Hoskins was never served. He kept in hiding. An attempt was made to get the court to dismiss the matter or to impose a fine, but Judge Swayne, considering the character of the assault and the fact that Hoskins had evaded the officers of the court, refused to do anything until Hoskins appeared in court and was examined. Hoskins was in the habit of becoming intoxicated, and one day he left for Pensacola with \$450 on his person, got to drinking hard, and was found dead, it being claimed that he took laudanum to commit suicide. Now it is claimed that he took the poison rather than face Judge Swayne. A more unreasonable and unfounded statement never was made. He was not under arrest. This was a long time after the contempt had been committed. Judge Swayne had made no threats against him and had done no act to oppress him. All he ever did was to issue a rule upon an affidavit which made it his duty to do so. He did what any judge in the land would

have done when it was brought to his notice that an officer of his court, while in the discharge of his official duties, had been assaulted, brutally beaten, and property in the custody of the law taken from him by force.

I am glad that the majority have made Young Hoskins's case a ground for impeachment, because it emphasizes the effort that is being made to unjustly ruin a man who has faithfully discharged his judicial duties. He has been guilty of wrongdoing, oppression, and tyranny because he found one man guilty of contempt for stabbing an officer of his court and interfering with him in the discharge of his duties and for issuing an order for the arrest of another who brutally assaulted another officer and took from him by force property in his custody as an officer of the court. No judge was ever before in this country maligned, abused, slandered, and illtreated as Judge Swayne has been, and this maliciously, too. It has been reported of him by his enemies, and caused to be published in the press throughout the land, that he is a corrupt judge, ignorant and incompetent; that he has managed bankrupt estates pending in his court in such a manner as to absorb the entire estate in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is in effect legalized robbery and a stench in the nostrils of all good people.

The foregoing language first found form in a resolution lobbied by the said O'Neal through the Florida legislature. It was again stated on the floor of the House of Representatives when this resolution was offered, and it has been published throughout the land in the public press; and there is not a scintilla of truth in any part of it, or no fact proven to warrant even the suspicion of such grave and serious charges. A subcommittee spent 10 days in Florida investigating these charges, and the result of their labors is now printed and on file with the documents of this House. Every opportunity was given to Judge Swayne's accusers to prove their charges. Every witness they wanted was subpoenaed, hearsay, irrelevant, and immaterial matters were received in evidence, and no obstacles were put in their way. Five lawyers for the prosecution for some time had been diligently at work, and I submit that not one single bit of proof can be shown where Judge Swayne ever did an act that was corrupt or unbecoming a just and upright Judge. So much for the charges of corruption. The record introduced and printed, giving a list of cases tried by him and appealed, shows that as a judge he has made an excellent record and that he is not incompetent and ignorant.

The fact that Judge Pardee assigned him to sit on the circuit court of appeals and to try cases in different parts of the district for six, seven, and eight months during the year is a good recommendation for his standing as a judge. In fact, no one so far has had the hardihood to come forward and swear that he is an incompetent and ignorant judge, and there is nothing in the record that shows it.

As to the bankruptcy business, there can be no excuse for the slanderous statements made, to wit, that "all cases were managed corruptly, the assets frittered away, no dividends paid, until the matter became so notorious as to be a stench in the nostrils of the people." This is hard language, and, more than this, it is not supported by the evidence.

Out of 175 cases of bankruptcy commenced in his court the prosecutors picked out 5 or 6. They were requested to call the attention of the committee to any wrongs committed in these particular cases, and this they failed to do. Out of 175 cases not one was shown to have been managed as they had charged. On the contrary, the report of the Attorney General shows that the bankruptcy business before Judge Swayne was managed prudently and well. Every judge has the right to have his honesty and integrity protected. Nothing so weakens the respect for a judge as to charge him with corruption. Nothing should be quicker frowned down by the people than such charges when false. Judge Swayne has for months stood up under these false and malicious reports—and they were malicious when made because they were based on no fact. He is entitled to vindication somewhere. The charges have been preferred in this House, the evidence is on file here, and he should receive his vindication here.

J. N. GILLETT.  
ROBT. M. NEVIN.  
D. S. ALEXANDER.  
GEO. A. PEARRE.

#### VIEWS OF MR. LITTLEFIELD.

I have not had the time to examine carefully the minority views of Mr. Gillett, but I have examined with care the record in this case, and I have no hesitation in saying that, in my opinion, it does not disclose a state of facts that would justify impeachment proceedings.

C. E. LITTLEFIELD.

## VIEWS OF MR. PARKER.

In the opinion of the subscriber, proceedings for impeachment of Judge Charles Swayne should not be begun. It is not necessary always to justify his action or to maintain that his behavior has always been consistent with judicial dignity or the duty that he owes to his district. He has been out of that district a great deal of each year, but since 1901 he has rented a house there, and more lately his wife has purchased, and it can hardly be said that he has not resided there, within the meaning of this criminal statute, for a period covering all ordinary limitations of criminal prosecutions. Those limitations should govern this case.

It does not appear that his behavior in any of the cases cited by the majority renders him liable to impeachment. He was justifiably severe with O'Neal for getting into a quarrel with an officer of his court about his official action as receiver in bankruptcy and then stabbing him. He was right to be severe when young Hoskins beat the clerk of another such receiver and took from him books claimed by that receiver. He had occasion for righteous indignation against two attorneys of his court, who doubted his word when he denied all interest in a case pending before him, and brought suit against him personally in order publicly to emphasize that doubt. In such a case he should not be censured even if he went to the limit of his jurisdiction to defend the honor of his court.

The adjournment of the proceedings in bankruptcy of the elder Hoskins was intimately connected with the contempt proceedings as to the younger one. There appears to be no substantial proof of the charges of corruption, ignorance, incompetency, deliberate waste of bankruptcy assets, criminal or improper favoritism to certain lawyers, failure to hold terms, improper acceptance of accommodation indorsements from attorneys or litigants, or the wrongful discharge of convicts. In the opinion of the majority all these charges appear to be without foundation. Whether the conditions that prevail in this district demand some legislative remedy may be a question, which is not here now. In my opinion Judge Swayne is not liable to impeachment.

RICHARD WAYNE PARKER.

Mr. GILLETT of California. Mr. Speaker, how much time have I remaining?

The SPEAKER pro tempore. The gentleman has 20 minutes remaining.

Mr. GILLETT of California. Mr. Speaker, I reserve the rest of my time.

Mr. PALMER. I have the conclusion of this matter, I believe, and I think the gentleman ought to use his time now.

Mr. GILLETT of California. I will reserve my time, and we will get through that much earlier if I do not want to use it.

Mr. PALMER. I yield one hour to the gentleman from Missouri [Mr. De Armond].

Mr. DE ARMOND. Mr. Speaker, I had regarded the situation and the surroundings as peculiarly favorable for an impartial consideration and an honest and patriotic disposition of this case. No political campaign is on to excite the Members of this House or the country. The same party that is in the majority here is in the majority in the Senate, and by an overwhelming vote of the people it has been intrusted for four years more with the executive control of this Government. If the judge against whom articles of impeachment have been reported be removed from office he will be succeeded by another of the same political faith. How any party or any faction of any party could derive advantage or suffer harm through the proper disposition of this case is something entirely beyond my power to fathom; and yet, Mr. Speaker, there is evidently on foot and has been in progress for days an effort, organized, systematic, persistent, to dispose of the matter, not according to the merits, not according to the facts or the law, but by drawing the line, if it be possible, upon the middle aisle of the House.



I do not know, Mr. Speaker, that there has ever come to me in my career here in this House a moment when I felt like bowing my head in sorrow and in shame as when the letter from Judge Pardee was read yesterday by the gentleman from Ohio [Mr. Grosvenor]. From the depths of my heart I am to-day in sorrow and in shame for that exhibition. The first time in the history of the American Republic we have just had in the House a saddening exhibition of judicial partisan intermeddling.

Suppose some one, out of feelings no matter how tender, out of regard no matter how high or how deep, out of motives no matter how pure, according to his conception, should write to a juror sitting in a court under Judge Pardee and say, "I can not believe that a juror of your political faith will render a verdict for the plaintiff or will find the defendant guilty."

Even though it were ignorance appealing to ignorance in sightless innocence instead of a judicial dignitary in petty partisan zeal appealing to legislative cunning and prejudice, what would be the action of the judge? How with righteous indignation his brow would be mantled? How would the terrors of judicial dignity and judicial power be visited upon him who dared invade the sanctity of the court and seek to prejudice a juror and turn him from duty! Suppose the man writing to the juror were to say, "I do not really know anything about this matter, but I am sure that on account of politics you will forget your oath; you will have no regard for your duty to the country; you will have no respect for the facts of the case nor the requirements of the law." What would be the action of the judge then?

I understand that this is an upright judge and that his record is good. I am sorry that he has put upon that record a stain which years of usefulness, which even a lifetime of rectitude and judicial dignity and devotion to judicial duty, could not remove. The ermine is stained beyond the power of time and the effort of man to make it clean again.

There it is and there it will hang, the one judicial robe in all our history thus stained and tarnished and blotched, with time but deepening the hue of the great indiscretion and holding it up for the wonder and the sorrow and the warning of those who are to come. I am sorry that this has happened. I am sorry that the eloquent and capable gentleman from Ohio [Mr. Grosvenor], in the plenitude of his zeal and in the rich fruition of his partisanship, saw proper to expose his friend, the judge, where he will stand for all time, pilloried as the judge who attempted to do here in this House, who attempted to do here in the great American Congress, that which if done by the humblest man in the land in the meanest court that sits would bring down upon the offender the condemnation of his neighbors and the heavy hand of judicial correction.

In his telegram authorizing the public use of his letter to defeat the efforts at impeachment, Judge Pardee says: "Use your discretion in my behalf and I will be satisfied." What will the judge finally think of the "discretion"? Will he wish any further use of such discretion "in my behalf," and will he be "satisfied"?

This is a partisan proceeding, is it? This is a pursuit of Judge Swayne, forsooth, because he is a Republican, is it? What are the charges against him? Not one of them relates to politics. There



is not a particle of politics in one of them, except politics such as Judge Pardee injects when, in his letter to the gentleman from Ohio [Mr. Grosvenor], he says:

I do not think that a Republican House should vote impeachment against him [Swayne].

Is there any politics in certifying to an expenditure of \$10 a day when only two or three or four dollars a day have been expended? Is that partisan? Was it partisanship to use, as Judge Swayne used, cars in the possession of the receiver appointed by him? Is that partisanship? Where does the partisanship crop out in the sad case of O'Neal? Where is the partisanship in the case of Belden and Davis? Is the requirement of the law that a judge shall reside in his district political, or are the facts of residence and nonresidence partisan? Never was a case freer of politics, and never was there one that should be freer from partisan influence and prejudice.

Then what of the attitude of the judge who, descending from his lofty seat upon the woolsack down, down to the level of those who suggest things to juries, writes such a letter as Judge Pardee wrote, or of him who, from his place here in the House, tries by arousing partisan feeling to blind the judgment of honest men, to hoodwink and tie those whose honest intentions would see no partisanship?

When the muse of history comes to gaze upon the record made here to-day and goes over these proceedings, how will these people appear? How far away will drift the clouds and the dust, and how dull and pulseless will be the stir and the noise of partisan contention, and how strong, and clear, and distinct will loom the outlines of this case.

Here are the facts in the record, and here they will remain until the erasing finger of time in far distant ages shall have rubbed them out. Partisanship, forsooth. What has this mighty party—so recently covered with the laurels of a phenomenal victory—what has it to gain by invoking partisanship here and shielding by partisan means a judge against whom articles of impeachment are leveled?

Let us consider for a moment this strange, new philosophy, this philosophy of tender conscience, this philosophy of sublime self-consciousness, which must be satisfied beyond a reasonable doubt of the guilt of Judge Swayne before—what? Finding him guilty? Oh, no; before putting him upon trial, so that the triers—the Senate—may determine whether or not he is guilty! Gentlemen exhibit here to the admiring gaze of their fellows and hope to place before the eyes of an admiring country a tender consciousness, a kindly good feeling which justifies the conviction of Belden and Davis and O'Neal, not beyond a reasonable doubt, but contrary to a reasonable doubt and against the weight of the evidence. No conscientious scruples, no reasonable doubt about poor O'Neal, gone to his long account. No question of reasonable doubt about the guilt or about the motives of Davis and Belden. Only about Judge Swayne must reasonable doubts swarm—unless satisfied beyond a reasonable doubt that Judge Swayne is guilty do not put him upon trial!

Eloquent gentlemen who hope to stand high as lawyers, and who heretofore have stood high in the estimation of this House, gravely urge that no articles of impeachment should be voted here, no trial should take place in the Senate, unless beyond a reasonable doubt they are satisfied of Judge Swayne's guilt.

The Constitution is not up to the level of the vast intelligence and the high conscientiousness of these gentlemen. It is defective in this particular. Strange that the Constitution did not provide that any person against whom articles of impeachment should be exhibited, after being here found guilty beyond a reasonable doubt, might be tried in the Senate to see whether he would be found guilty there also. Sainted fathers from the far-away past! Great men of that great age of this Republic, when the Constitution was made and the foundation stones of human liberty and self-government were anchored deep and fast, you did not have this tender conscience, this grand, broad, sweeping intelligence, this tremendous grasp and profound legal learning, which require that a man shall be convicted before he is placed on trial! [Laughter.] Oh, if it had been possible for these sapient sons to change places with the fathers, what a Constitution we would have!

And then gentlemen have discovered, too, that the Constitution provides for impeachment only in cases of treason, bribery, and other high crimes and misdemeanors. There we have again the profound learning of our friends, all exerted for the benefit of Judge Swayne. I would like these gentlemen to tell the House, and I am sorry they did not tell—I hope some of them may put remarks into the Record explaining to the House—what is to be done in the case of a judge who does not live up to the requirement and work up to the standard of “good behavior” in office? Do you know any way to get him out except by impeachment?

Is it not a fact and a very common fact that in construing constitutions and statutes you take into consideration all in the documents before you—all in the book—all in the Constitution relating to a particular subject-matter, reading it altogether and in harmony, if you can?

In one provision of the Constitution it is said that civil officers may be removed by impeachment for treason, bribery, and other high crimes and misdemeanors. In another part the Constitution says that these lifetime officers shall hold office during “good behavior.” Gentlemen say that Judge Swayne has not been shown to be guilty of “high crimes and misdemeanors,” in a technical sense, and therefore he can not be impeached and can not be removed from office. If his conduct has fallen short of the requirements of “good behavior” in a judge, no question, it seems to me, can abide in the mind of a man who will consider fairly and deal dispassionately with the subject, as to the right, power, or duty of the House to impeach, or of the Senate to try and convict, a civil officer of the Government, on impeachment, when his behavior is bad instead of good.

Now, let us look upon these charges, and I can only dwell upon them briefly. One charge is that this Judge Swayne certified to his expenses at \$10 a day, when they were less. Is it true or not true? Its truth stands demonstrated. What is the law? Men may quibble about it, but the law entitles the judge to the amount of his reasonable expenses, whatever the amount, not to exceed \$10 a day. That is all.

But, say gentlemen, he ought to be permitted to show that there are other judges who also have been charging \$10 a day when, maybe, their expenses were less. That is a fine philosophy, and there are a

good many people in this country, but, happily, far from a majority—really a small minority—who would be very glad to see that doctrine established. A light-fingered gentleman arrested for feloniously lifting a pocketbook from its proper receptacle in the wearing apparel of the owner, confessing his guilt, might, in seeking to defend his conduct, offer to show that there are other people who steal pocket-books; and when that character of testimony is not admitted there are gentlemen of high standing as legislators who, for consistency's sake, should insist that a great mistake is made, a great wrong done.

Gentlemen, why, on your theory, would it not be better to revise our whole court procedure? Let the courts in administering justice say, for instance, "Gentlemen of the jury, it is charged that this man stole a horse, and he admits that he did; but, gentlemen of the jury, does the testimony show that he is not alone, is not the sole operator in this field? If you find that other people are engaged in the same business, you will return a verdict of 'not guilty?'"

How amazing that in the House of Representatives, how astonishing that in a body composed largely of lawyers, gentlemen gravely and apparently with sincerity—certainly with unction and with many words and the consumption of much time—contend for a proposition like this?

Judge Swayne enjoyed the "hospitality" of a receiver whom he had appointed. A passenger car—the president's car—was sent to Guyencourt, Del., for him, and upon that car he and his family and some friends were carried, at the expense of this railroad in embarrassment, to Florida, where he was to hold court. Another time he was conveyed across this great continent, from far-away Florida, down in the southeast, across the great swelling southland, along hard by the fields of blooming cotton, away over the mighty Mississippi, away across the vast plains that lie to the west, over the great Rockies, even to the far-away ocean which washes the western shore of the continent—as the "guest" of a railroad company!

And mark you, gentlemen—there has been a little confusion about this—as the guest of the Florida Central & Peninsular Railroad Co., whose general passenger agent went along with him, distributing, as the judge naïvely says, literature to advertise the railroad. And note, too, that the uncontradicted testimony of a reputable man establishes to a moral certainty that that railroad at that time had important litigation pending in the court over which Judge Swayne presided.

Oh, yes; "a small matter," say gentlemen. They estimate, in a rough way, that the conveyance from Guyencourt of the judge and his family and "wife's people" cost the railroad company, whose property was in the hands of his receiver, a small sum only. We have all of us heard, as one of the old stories passing from mouth to mouth and generation to generation, about a certain individual once making a defense on a plea that had to do with size and not with substance. How far would that plea go—how much would Judge Swayne have to wrongfully use a car placed by him in the hands of a receiver, and how much would the use of it have to be worth, before he would reach a point where he would have committed an offense or effected a departure from "good behavior," on account of which he might be impeached?

But gentlemen say, "Oh, we do not justify that." No, not by your words. How about your votes? If you vote against impeaching Swayne, you do justify it. You justify it in a solemn and effective way. Oh, how weak are our words here, how little do our arguments amount to, and how great, how weighty, how tremendous, sometimes, are the consequences of the decisions made by our votes. "Oh, no," say these gentlemen, "we do not justify that. The fact is, we rather think Judge Swayne is censurable for that, but let us not impeach him."

And the railroad car was not hurt any by this use. It was quite a good thing for it, a kind of relief from the tedium and the comparative ennui from which the car suffered in standing upon the siding. It was rather beneficial to the car. Is that an argument? Will that do? Suppose that Judge Swayne's receiver had had a livery stable in charge. It would answer just as well to claim that the horses were better for exercise; and as for the vehicles, it was not good for them to stand by unused, and therefore Judge Swayne might do a livery business and make what he could out of it. The vice is in doing what he had no right to do, what he should not do, what constitutes, to say the least, a departure from "good behavior," upon which his title to his office depends.

Of course, it would naturally occur to some acute mind to suggest that as it is not proved that anyone objected to an allowance to the receiver in the settlement of his accounts, for the outlay involved in the "courtesy" of furnishing transportation for Judge Swayne, family, and friends, the judge's offense is condoned and can not be a ground for impeachment. Read about what happened to Davis and Belden and O'Neal, and wonder what would have been the fate of the hapless mortal daring to commit the awful "contempt" of questioning in Judge Swayne's court the propriety of Judge Swayne's use of the property of another, free of cost, for his own convenience and gratification! And then, this theory, logically applied, would abolish punishment for murder, for who could doubt the truth of the plea that the victim had not complained since he was murdered!

This is and for many years has been the law:

A district judge shall be appointed for each district \* \* \*. Every such judge shall reside in the district for which he is appointed, and for offending against this provision shall be guilty of a high misdemeanor. (Sec. 551, Rev. Stat.)

Swayne was appointed district judge for the northern district of Florida and his appointment was confirmed about the 1st of April, 1890. Judge Swayne says (record, p. 241) that he moved to St. Augustine in the summer of 1890. The boundaries of the northern district of Florida were changed in 1894, and ever since that change St. Augustine and Jacksonville have been in the southern district. Pensacola is and has been in the northern district. Judge Swayne further says (record, p. 241):

I resided in St. Augustine with my family. \* \* \* After a consultation with my friends in Jacksonville and vicinity they urged me not to move my furniture nor family, saying that the next Congress would be Republican and the district would be placed back in its usual form. My furniture was allowed to remain, and I went at once to Pensacola. I found a leading Democratic friend there, and I stated to him that I had concluded not to move my furniture there, and it was all understood by the people there. I was there for a considerable period, sometimes early in October and sometimes a little later, and I was there all the time I was needed unless holding court somewhere else. In 1890, in July, I went with my

family to Europe. In the spring of 1900 I was holding court at Birmingham, where I had a great many friends, and after that I went to Pensacola and rented a house \* \* \* moved there early in October.

According to his own story—to say nothing of any other testimony—Judge Swayne did not “reside” in his district from 1894, when St. Augustine ceased to be in it, until October, 1900.

But Judge Pardee, in the Pardee-Grosvenor letter, says:

After his district was changed in order to comply with the alleged spirit of section 551 of the Revised Statutes, it became necessary for him to dispose of his residence in St. Augustine and acquire and move to a residence in the western part of the State. In this respect, I am informed that he at once declared a residence and domicile in the western part of the State and followed that up with more or less activity by acquiring a house and other things, all taking four or five years.

Judge Pardee was informed that Judge Swayne “at once declared a residence and domicile in the western part of the State.”

Here we have “absent treatment” applied to Judge Swayne’s nonresidence malady. If efficacious in his case, there appears to be no reason why it may not be employed to advantage in many other cases, varying widely, according to the diagnosticians. Indeed, this benign treatment may prove to be the universal, never-failing cure-all, the like of which never yet appeared—that is, prior to Judge Pardee’s discovery and his associate’s announcement—even in the most promising of “patent” medicine nostrum advertisements.

Why might not Judge Swayne reside until his dying day in Guyencourt, Del., having “declared a residence and domicile” elsewhere? Would not that do in the way of compliance with the “alleged spirit” of section 551?

Who can find excuse for being poor when he can “declare” wealth; hungry when he can “declare” food to his taste; naked when he can “declare” raiment fit for a Solomon?

Judge Pardee is likewise informed that Judge Swayne not only “declared” a residence and domicile, but that he actually “followed that up with more or less activity by acquiring a house and other things, all taking four or five years.”

How comprehensive the expression “with more or less activity!” As we dwell upon it the fetters of time, place, and circumstance seem to drop away, so that each one may feel free to train his own eyes of the mind upon Judge Swayne, and measure for himself the average rate of speed with which Judge Swayne moved, “with more or less activity.” To be sure, the detailed information conveyed by those other words—“all taking four or five years”—is important and helpful.

In “four or five years”—what are a few years between friends—proceeding “with more or less activity,” Judge Swayne succeeded in acquiring “a house and other things” in his district; just what “other things” we do not know.

Now, take the case of O’Neal. Some gentlemen, forgetful of the facts, talk about this being a political prosecution, saying that but for the pursuit by O’Neal of Judge Swayne, on account of the contempt proceedings against O’Neal, there would be no complaint or effort to impeach. What about the O’Neal case?

I am aware that a gentleman speaking on this side, in the plenitude of what he would have us regard as generosity, magnanimously agreed with the gentleman from Maine [Mr. Littlefield] in the conclusion that



there is absolutely nothing in the O'Neal case; that it has been demonstrated that there is nothing in it. And yet, Mr. Speaker, may we enjoy a little while longer the privilege of believing that there is something in it? May we still indulge the conviction that a great judicial outrage was perpetrated when O'Neal was adjudged guilty of contempt and, in violation of law, was sentenced to be confined 60 days in the county jail?

No man can read what the gentleman from Maine attached to his remarks as an exhibit—the record of proceedings in this case of O'Neal—and draw the conclusion from it that O'Neal was really prosecuted for a contempt or found guilty of a contempt. The judge discussed self-defense. What has self-defense to do with the matter of contempt? The judge discussed the credibility of witnesses. What has that to do with the matter of contempt? I venture to say that if you could convict any justice of the peace in any township in any county in the United States of as gross ignorance in admitting testimony, as gross perversions of the law, or as gross abuse of power as Judge Swayne exhibited in this case, as this record discloses, that justice of the peace would be disgraced in the community and would surely be defeated, if a candidate for reelection, for dishonesty or incompetency or both combined. [Laughter and applause.]

O'Neal was compelled to testify whether or not he had been arrested and had pleaded guilty to a charge of carrying concealed weapons; whether he had been charged with an assault and had been convicted or had pleaded guilty. What had that to do with the question of whether or not O'Neal committed a contempt? What warrant could there be for the introduction of testimony about Greenhut being a man of peace?

The statute is plain, and the House is or ought to be and can be familiar with its provisions.

That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts. (R. S., 725.)

That if any person or persons shall, corruptly or by threats of force, endeavor to influence, intimidate, or impede any juror, witness, or officer in any court of the United States in the discharge of his duty, or shall, corruptly or by threats of force, obstruct or impede, or endeavor to obstruct or impede, the due administration of justice therein, every person or persons so offending shall be liable to prosecution therefor by indictment, and shall, on conviction thereof, be punished by fine not exceeding \$500 or by imprisonment not exceeding three months, or both, according to the nature and aggravation of the offense. (R. S., 5399.)

Study it and analyze it; pick at it letter by letter, word by word, clause by clause. I defy any man, I care not who he is, to find in that enactment any power in any court to punish summarily as for contempt anybody for anything shown to have been done by O'Neal. That O'Neal might have been indicted by a Federal grand jury if it had seen proper to indict him is conceded; but is the grand jury to be dispensed with? Yes, if Swayne's conduct in the O'Neal case constitutes "good behavior;" if he may be held guiltless, notwithstanding this usurpation, this tyrannous abuse of power, then the grand jury may be swept away. But if gentlemen have any regard for this law.

passed almost 74 years ago, enacted by men long since gone from this scene of action, to restrain just such judges as Swayne, they must hold that a judge can not with impunity do arbitrarily under a charge of contempt what might be done legally upon indictment. If this law can be disregarded, and if gentlemen can justify themselves in voting to sustain a man who disregards it, we have reached the farce stage. Are we where men suffer their prejudices to run away with judgment and stifle conscience, where reason does not guide, and justice does not control?

Let us look at the case of Belden and Davis. A good many gentlemen have proceeded upon the assumption that this judge acted most excellently in that case.

He had purchased some lands, part of which was embraced within a tract concerning which suit was pending in his court. He was asked on account of that to "recuse" himself, using a word, as I understand, from the civil law—in other words, to step aside and let another judge try the case. Let me pause a moment at this. Gentlemen proceed as though it was an outrage to ask him to do that, as though dropping that transaction is enough—we may assume that he dropped it; we do not know, the assumption may not be well founded—but let us assume that he did drop it. Is that enough?

Suppose one were called to sit as a juror in a case, and it should appear that he had been dealing with the subject matter of the litigation, and suppose that a litigant were to challenge him and ask that another who had not necessarily and inevitably made up his mind, at least tentatively, with regard to a portion of the very issues upon which he would have to pass take his place—what then? Would the juror only have to say, "Why, I quit this deal just as soon as I found that I had been summoned upon the jury"?

What would the judge say about it? Would he say, "Oh, gentlemen, that objection does not amount to anything; this juror says that just as soon as he learned that he was on the jury he ended the transaction in which he was engaged; he is perfectly competent to try your case"? Suppose the entire panel were made up of such jurors, and suppose that, over your objection, your case went to trial before that kind of a jury, do you doubt what a court of review would say? But the poor, humble little juror—everybody knows he would be excused—would be regarded as disqualified, because he had looked into the matter and knew about it or had information about it, having investigated it to a certain extent. Of course, he would be "recused" anywhere, unless it might be in Judge Swayne's court—I could not tell about that. But when it comes to the judge—say nothing about common fairness, or the rights of clients or lawyers!

Now, were these lawyers wrong in concluding that Judge Swayne was not the right man to try their case, taking the surroundings and everything into consideration? Why did he insist upon sitting in a case in the essence of which he has been mixed and involved? Perhaps we can get an answer when we view the subsequent course of the leading attorney for the defendants, himself a party in interest in the suit. As we know, this is the case of Florida McGuire against the city of Pensacola and others. Immediately following the dismissal proceedings for contempt were instituted against Davis.

Belden, and Paquet, the lawyers for the plaintiffs. They were instituted after a conference between this judge and this leading lawyer for the defendants, and himself one of the defendants in the Florida McGuire suit—begun by that lawyer and defendant.

Ordinarily—I do not know how it is in Judge Swayne's court; I know not whether there is some peculiarities about the climate of Florida which makes it different there—ordinarily a defendant in a case is content when a plaintiff dismisses. The plaintiff dismissing his suit, the defendant in ejectment is left in peaceful possession of the premises sued for. Usually a defendant wishes simply to be let out of court with costs. He defends only to prevent the plaintiff from prevailing against him. When the plaintiff dismisses there is an end of that suit—the defendant goes free.

But these plaintiffs brought suit in a State court against Judge Swayne, and how great the outrage! How sublime the indignation of gentlemen over this proceeding against a judge! Ah, they sued the judge! They knew there was no case, and the judge, according to the language which he himself uses, felt compelled to defend the dignity of his court!

I think, Mr. Speaker, that I can see a very simple and plain way of preserving the dignity of that court, a course by which its dignity would have been emphasized, by which dignity would have been acquired by it. If this suit against Judge Swayne was groundless and baseless, it was only necessary for Judge Swayne to interpose his plea, appear in his own defense and drive his assailants out of court through a voluntary dismissal, or by a judgment of the court, proving to an absolute demonstration that the action against him was groundless and baseless. Then the dignity of the court would have blossomed and bloomed in a way far different from that conceived and brought about by this judge.

I am not assuming to be a great lawyer, though I really believe. Mr. Speaker, after the assumptions in that line, almost anybody at this time, and under these circumstances in these proceedings might safely assume that he is a great lawyer—I am not assuming it, however—but I advance the proposition that there is no contempt and can be no contempt without the doing of that which is wrong. Is that proposition correct or is it not? If you do what you have the right to do, if you do that which violates no law, rule, or order. if you do that which violates no duty, you can not be guilty of contempt. Now, was there a legal right to bring suit against Swayne in the State court? No man questions it. The reason I think it is not questioned in argument in this matter is that Judge Swayne in an unguarded moment himself conceded the right, and therefore his eloquent apologists are hampered, and do not feel like going back upon the confession of Judge Swayne; otherwise I have no doubt that hours would be consumed in the effort to make it appear otherwise.

Well, they did sue Judge Swayne, and had a right to sue him. They agreed at the time of bringing that suit that they would dismiss the other suit in Swayne's court—would do for the defendants what defendants pray for. But the defendants desired a trial by Judge Swayne! Why? Are there no other judges in that region of country? If Judge Swayne had recused himself, like a gentleman and a judge,

like a man proud of his position, proud of his honor, despising to stain either; if Judge Swayne had said, "Gentlemen, of course I will not try this case"—then I think there would have been found another judge. But he might not have answered so well the purposes of the defendants; he might not have been a judge so completely to their liking. Was there any reason for a contention and insistence upon Judge Swayne trying that case except a bad reason, a reason that a man will not avow?

Why, there was Judge Locke, in the same State, of the same politics, but of a different stamp; a judge, it is said and not denied, of upright conduct, who, by following the path of the law and of judicial gentility and decency, has endeared himself to the community where he lives and labors. He might have been called in. Another judge might have been called in from another State, and the Florida McGuire case might have been disposed of without the stain and the shame of forcing a party to trial under a judge who was deeply interested—just how deeply and how far, by what means and for what purpose, upon his part and upon the part of those who dealt with him—that is something which I do not know and you do not know. Decency required him to step aside, judicial morality required it, the interests of justice required it, but he would not.

True it is that he said he didn't take a quitclaim deed when he bought land the title to which he was determined to try! How praiseworthy! Oh, noble judge; oh, righteous jurist; oh, lofty paragon of what is to typify or may typify judicial morals in this country! As soon as he finds he has been dealing with the subject matter of a suit pending in his court he quits it and insists upon trying the case. And then the conduct of these attorneys—they did not apologize, they did not crawl and cringe; they seem to have been made in the image of their Maker; they seem to have had the pride of conscious honesty; seem to have been sustained by the courage of decent manhood.

No; they did not cringe and crawl. Belden, with his seventy years of honorable life behind him, sick and afflicted, sore and suffering, went to the common jail, a victim of the tyranny of this outrageous judge, rather than bow the knee before the tyrant and humbly lick the hand that unrighteously smote him. They might have said to his august majesty, "Oh, pray forgive us; we knew not what we did; we know not what we do; great and mighty judge, what concern is it that you have been dealing with the subject matter of this suit; away with our professional pride and our duty to our clients; perish all of them, rather than risk your wrath, rather than be the victims of your judicial displeasure, of your great, magnificent, and glorious judicial power."

They did not do it. And it is an honor to the bar of the Union, an honor to our profession, an honor to humanity, that they did not.

But, gentlemen, read a little note signed by Mr. Paquet some months afterwards. Paquet went to New Orleans, called away by the sickness of a member of his family, and Davis, unfortunately, got into the case as a kindness and service to a brother attorney. Paquet comes back later and files something which they call an apology, and the judge says in his statement and testimony that he

dealt leniently with Paquet when he filed this, and let the matter drop, and that if Belden and Davis had done as Paquet did he would probably have disposed of them in the same way. Swayne says they talk about malice in his brutal treatment of Belden and Davis, but that if he had been malicious why would he not have imposed a punishment of ten months instead of ten days in jail? Behold the magnanimity! Behold the bright light and glory of judicial charity and forgiveness!

Swayne did impose a sentence of ten days in jail and a \$100 fine, with disbarment for two years—not very severe, I suppose; he did not mean much by it, just a little friendly admonition, as much as to say, “Boys, you have gone too far in this, and I must pull in the reins a little on you. I must call a halt.” Ah, charity!

Charity does cover a multitude of faults, I suppose. The mantle is ample. It is stretched overmuch, perhaps, as all of us have need of it; but how bright and good it must be, how extensive, if it can cover such malefactions in law, such disregard of duty, such perversion and abuse of power.

Belden and Davis were adjudged to pay a fine and undergo imprisonment, when by the law but one of these penalties could be imposed. The judge did not know the law, they tell us. Well, I do not know whether he did or did not. He imposed an unlawful sentence. He took jurisdiction where he did not have it, and wantonly and cruelly did what he could not lawfully do in any contempt case.

Now, Mr. Speaker, not only have we this Pardee letter, through the kind officiousness and busybodyness of our good friend from Ohio, but we find that Judge Pardee figured in this case. We find that the application for the writ of habeas corpus was presented to Judge Pardee and the writ sued out before him, and Judge Pardee thought that Swayne's victims could do one of the two things; he held that the sentence was illegal and that they could take their choice between paying the fine and undergoing the imprisonment. Possibly here is a little explanation of why Judge Pardee breaks in.

And there we have it. The falsification of accounts, the wrongful use of property in the hands of his receiver, the wanton exercise of arbitrary power in the case of O'Neal, the like exercise of arbitrary and unwarranted power in the case of Davis and Belden, positive, protracted violation of the residence statute; and yet there will be no impeachment if political prejudice can prevent it. No impeachment! This shall go, it shall pass as the idle winds that blow over the fields and are gone—if prejudice can prevail.

The time will come when what we do here will be analyzed; and if this impeachment fails, the man who reads the story of this day and this occasion, set down with the impartiality of the historian, will read that Swayne was justly impeached, or that impeachment failed. not because Swayne had not done much to warrant impeachment. but because enough gentlemen, in the blindness of partisan hate and partisan zeal, prevented impeachment.

Mr. Speaker, that would be an impeachment as long as time shall last, as long as these records shall endure, of the men who bring about that perversion of justice, if they do. We will then have passed from the question of the impeachment of Swayne and we shall be where history impeaches the men who fail to impeach Swayne. They will have impeached themselves; and after our period of service here shall



have ended and we shall have been gathered to our fathers, when the record of this day is read there will be found impeached at the bar of history, impeached at the bar of conscience, impeached before the tribunal of high and patriotic duty, the men who allow blind partisanship to prevent the impeachment of the judge who deserves impeachment; who, if he be shielded, will be shielded because Members shrink from doing their duty, as he perverted and abused the power to do his. [Loud applause on the Democratic side.]

Mr. GILLET of California. I yield five minutes to the gentleman from Pennsylvania.

Mr. PORTER. Mr. Speaker, I regret that I can not hope to throw light upon this subject. The distinguished gentleman from Pennsylvania [Mr. Palmer], the chairman of this committee, spoke the other day of this body as a body of lawyers. The same remark has been made this afternoon by the distinguished gentleman from Missouri [Mr. De Armond], and I think that the House is open to this impeachment. There are very few in this House who have not had the benefit of legal study and fortunately many have great knowledge of the law. For the last three days I have sat here and listened to lucid explanations in regard to the law, so that we could intelligently act upon this subject, this important subject that is now before us. I think it is very evident that there are many laws which any one of us might interpret for ourselves and which seem clear, that are very differently interpreted by other men, very differently interpreted by the courts, and on which there may be honestly a great difference of opinion. It seems to me, as a business man and not a lawyer, that there might be great improvement in this respect, and that laws might be written so clearly—I believe business men could do it—that there would not often be two interpretations possible.

On the 13th of December the House voted to impeach Judge Swayne. At that time the distinguished gentleman from Florida [Mr. Lamar] said, as I find it in the Record, that “the entire Judiciary Committee of this House submits the resolution to impeach the judge, and I assume, therefore, that the resolution to impeach will be voted upon affirmatively.” He says, “When it comes to the further question of specific charges, I shall ask to prefer the charge, and conclusively to prove it to every fair-minded man in this House, that he is a tyrannical and a corrupt judge.”

I deeply regret that I was not present yesterday afternoon when the gentleman from Florida [Mr. Lamar] spoke; but I presume he attempted to “conclusively prove that Judge Swayne was a tyrannical and corrupt judge,” “to every fair-minded man in this House.” I have asked some who were present, whom I believe to be fair-minded, and they tell me that they were not convinced. Nor have I been convinced by this whole discussion of such tyranny or cruelty on Judge Swayne's part.

I wish to say, further, that after the vote had been passed, after the previous question had been ordered, there was still an earnest desire on the part of many to arrive at a conclusion, so that they could vote with intelligence. When the previous question was ordered by a vote of 198 to 61, that did not seem to me, as a business man and not a lawyer, it did not seem to me a desire to arrive at the true merits of the question.

But later on that same day, December 13, Mr. Palmer said that the committee to formulate charges will "report to the House articles which, in their opinion, can be sustained by the testimony, and then the House can intelligently pass on the subject." Could a plainer statement well be made that up to that time few members could have been expected to form any very intelligent opinions upon it? The distinguished gentleman further emphasized this idea by saying also in the same paragraph that "it must be obvious to every Member of the House that the Judiciary Committee is hopelessly divided on this question as to what Judge Swayne should be impeached for." And yet in all this confusion of thought in the committee itself and in the House, the previous question had been demanded by a large majority. The suggestion that Members have since been influenced to vote against these charges by partisan motives, comes with ill grace, I think, from the other side of this House who joined in ordering the previous question at that time and who have acted with practical unanimity ever since on this whole matter.

And now, Mr. Speaker, it is because I have not been convinced that these charges, as presented and explained, are a sufficient basis for impeachment that I must vote against them.

The SPEAKER pro tempore (Mr. Gardner of New Jersey). The time of the gentleman has expired.

Mr. PORTER. May I have permission to extend my remarks in the Record?

The SPEAKER pro tempore. The gentleman from Pennsylvania asks unanimous consent to extend his remarks in the Record. Is there objection? [After a pause.] The Chair hears none.

Mr. PALMER. Mr. Speaker, I ask unanimous consent that all gentlemen who have spoken upon this question may have leave to print pertinent remarks in the Record for five days.

The SPEAKER pro tempore. The gentleman from Pennsylvania asks unanimous consent that all Members who have spoken upon the pending resolutions have the consent of the House to print for five days remarks pertinent to them. Is there objection? [After a pause.] The Chair hears none.

Mr. GILLET of California. I yield five minutes to the gentleman from Ohio.

Mr. GROSVENOR. Mr. Speaker, I do not rise to restate or reargue any of the questions involved in this impeachment; but I will turn aside for one-half minute to congratulate the House that the distinguished gentleman from Missouri [Mr. De Armond] has abandoned partisanship and has finally risen to the high plane of nonpartisanship in this contest. [Laughter and applause on the Republican side.] That gentleman has seen fit to illustrate his nonpartisan argument by claiming that some of us on this side have argued that where a man is charged with a larceny or robbery we claim that it is competent evidence to prove that others committed larceny and robbery in order to vindicate the man on trial.

That is a specimen of nonpartisan argument. What we have claimed was that in the construction of a doubtful statute usage and contemporaneous construction are not only competent to be proven, but are conclusive of the law of the construction. I have

been furnished by a gentleman with some very pertinent authorities, not weighty with the gentlemen who make such an argument as that, but weighty, I trust, with every intelligent lawyer on this floor.

The question now is simply this: Was Judge Swayne authorized and justified to put the construction upon this statute that he did by contemporaneous construction of court, lawyers, and the department through which his vouchers passed? And, secondly, if he was, was he entitled to prove it, and was the deprivation of him from the right to prove it error and wrongdoing that ought to set aside this impeachment?

I cite a very considerably respectable authority upon this question, and it was, mind you, a question on all fours with this, as I will show. This comes from Judge Story. Judge Story, in the absence of the opinion of the gentleman from Missouri [Mr. De Armond], would have been considered quite a lawyer. In his day he was. He said:

I own myself no friend to the almost discriminate habit of late years of setting up particular usages or customs in almost all kinds of business and trade to control, vary, or annul the general liability of parties under the common law as well as under the commercial law. It has long appeared to me that there is no small danger in admitting such loose and inconclusive usages and customs, often unknown to particular parties and always liable to great misunderstandings and misinterpretations and abuses, to outweigh the well-known and well-settled principles of law. And I rejoice to find that of late years the courts of law, both in England and America, have been disposed to narrow the limits of the operation of such usages and customs and to discountenance any further extension of them. The true and appropriate office of a usage or custom is to interpret the otherwise indeterminate intentions of parties and to ascertain the nature and extent of their contracts arising not from express stipulation, but from mere implications and presumptions and acts of a doubtful or equivocal character.

Now, I want also to call attention to an extract from an argument by Mr. Blaine upon the subject of the impeachment of Andrew Johnson:

Perhaps the best test as to whether the act of the President in removing Mr. Stanton was good ground for impeachment would be found in asking any candid man if he believes a precisely similar act by Mr. Lincoln or Gen. Grant or any other President in harmony with his party in Congress would have been followed by impeachment or by censure or even by dissent. It is hardly conceivable, nay, it is impossible, that under such circumstances the slightest notice would be taken of the President's action by either branch of Congress. If there was a difference of opinion as to the intent and meaning of a law, the general judgment in the case supposed would be that the President had the right to act upon his own conscientious construction of the statute. It might not be altogether safe to concede to the Executive the broad scope of discretion which Gen. Jackson arrogated to himself in his celebrated veto of the bank bill, when he declared "that the Congress, the Executive, and the court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it and not as it is understood by others." But without approving the extreme doctrine which Gen. Jackson announced with the applause of his party, it is surely not in unreasonable assumption that in the case of a statute which has had no judicial interpretation and whose meaning is not altogether clear the President is not to be impeached for acting upon his own understanding of its scope and intent. Especially is he not to be impeached when he offers to prove that he was sustained in his opinion by every member of his Cabinet, and offers further to prove by the same honorable witnesses that he took the step in order to subject the statute in dispute to judicial interpretation.

Now, there is an authority quoted with approval. That is exactly on all fours with this case, and it shows, gentlemen of the House of Representatives, that this defendant was deprived of a legal right when he sought to prove that this statute had had not only a judicial

but a departmental approval and interpretation, and that alone would be sufficient to reverse the judgment in any court in the country. [Applause.]

First, then, I add this defendant was refused by the peremptory and bullying treatment of a member of the subcommittee the privilege of proving what he could have proved, that there is a uniform and universal consensus of construction of this statute which gave to him and to all the judges of the United States this allowance in lieu of their expenses. That was what the statute was passed for. That was the understanding when it was passed. That was the earliest and uniform construction of it. That was the meaning of the statute, as interpreted by the courts, by the Departments, and by Congress. There is nothing plainer. Why, gentlemen, if this man had been convicted of murder with such a blundering, vulgar ruling upon a law question as the one under consideration, there is not a court in the United States that would not have reversed the finding of the jury and remanded the case for a new trial, and yet you are asked to shut your eyes to known facts and to proceed with this impeachment that can have but one result, and that result is an honorable acquittal.

But it is said that the friends of Justice Swayne have dragged politics into this question, and the distinguished gentleman from Pennsylvania [Mr. Palmer] shouts a battle cry of the Democratic Party as he rushes frantically about the Hall of the House appealing for votes. Observing a slight weakness on the Democratic side of the House, he shouts: "Turn the rascals out!" That is the battle cry of the Democratic Party. It rang from Maine to California during the recent campaign. "Turn the rascals out," says the gentleman from Pennsylvania. "Turn the rascals out" for what; and who are they? "Turn the rascals out" who have taken \$10 a day in lieu of their expenses in traveling as judges of the United States courts. If you turn one rascal out you better turn all the rascals out, and let this distinguished gentleman, leading a pure-in-heart crusade, advancing under the battle cry of "turn the rascals out," assail the courts of the United States and assail the judges wearing the pure ermine of their high office, assail them and refuse to permit them to prove the construction put upon this law by Congress, the construction put upon this law by the departments, the construction put upon this law by all the judges who have construed it.

Mr. Speaker, there can be but one result—a long, tedious, and vexatious trial in the Senate, the defeat of most of the measures which the country requires and demands so earnestly, no time to legislate upon railroad rates, no time to legislate in favor of the upbuilding of the American merchant marine, no time for anything, but to "turn the rascals out."

We shall see what we shall see, and when our managers come back from the Senate, trailing the flag of partisanship and persecution in the dust of overwhelming defeat, we shall understand then better than we understand now the principles of law governing this case and the elements of hate that have entered into it.

Mr. GILLET of California. Mr. Speaker, I now yield the remainder of my time to the gentleman from Massachusetts [Mr. Gillett].

Mr. GILLET of Massachusetts. This debate reminds me of a witticism of Sheridan—not our Sheridan, but Richard Brindsley. In one of his speeches he alluded to Gibbon's History, then just

published, as the "luminous page of Gibbon." The author, meeting him at dinner the next day, thanked him for the striking and flattering allusion, and after courteously accepting it, Sheridan turned to his neighbor and whispered "What I really said was 'voluminous.'" I do not mean to intimate that this debate has not been luminous—I think it has. I think all phases of the issue have been illuminated and exhausted, and I do not imagine, in now closing for this side, I can add any new features, but the impressions of one who is not on the committee, and consequently has not undergone the stress of the contest which has obviously raged there, may be helpful.

I suppose we will all agree that upon a question like this, where the House acts in a judicial capacity, we ought to aim at an impartial and judicial state of mind and come to a decision unaffected by personal or political prejudice. I have endeavored to take that appropriate position, but I will not pretend that I am certain that I have been able to rise above all prejudices. When I first learned that the Democratic side of this House was unanimous and intense for this prosecution I am afraid that, under the circumstances existing in Florida, a suspicion was aroused in my mind that this was a political and not a judicial prosecution.

I was amused yesterday to have a friend on the Democratic side remark to me that he was glad that whatever the result it would not be effected by a partisan vote. I asked him if any Democrats would vote against the impeachment, and he said he thought one would, but the Republicans would be divided. That seems to be the Democratic idea of nonpartisanship—a solid Democratic vote and the Republicans divided—that is the sort of nonpartisanship we have generally witnessed when questions of a judicial nature such as election cases have come before the House, and I must confess I weary of it. But despite the lack of encouragement from the other side, I have endeavored, I know not how successfully, to be uninfluenced by partisanship. Reading the reports of the committee tended to excite another bias in favor of Judge Swayne from quite a different reason. That committee, in the consideration of the question whether a judge had comported himself with becoming dignity and temper and uprightness, would naturally be scrupulous to itself display the high judicial qualities it demanded from him. I do not think anyone can read the report of the committee and the speeches in support of it without feeling that impartiality was not one of its characteristics, and that however Judge Swayne may have failed in judicial fairness and decorum the tribunal which was trying him could not be recommended to him as a pattern or exemplar.

But trying to through off the bias occasioned by the conduct of his opponents, the first feature that impresses me is the contrast between the proposed tribunal and the evidence. It seems to me the step from the sublime to the ridiculous will be well illustrated by the impressive and high-sounding charge "in the name of the House of Representatives and of all the people of the United States we impeach Charles Swayne of high crimes and misdemeanors" pronounced before the most august tribunal known to our Constitution, and then the trivial, petty, insignificant details of the evidence. And this is all that thirteen years of active, eager hatred could assemble against him.

I have not time now in these closing moments of this debate to discuss this evidence, and it has all been most thoroughly weighed



and dissected, and in my opinion it fails lamentably to support the sounding charge.

I wish to say a special word, however, upon the only charge which has the unanimous report of the Judiciary Committee—the making of a false certificate.

When evidence was offered before the investigating committee to show that other judges had done the same, it was excluded by the chairman on his own motion. Under the technical rules of law that was doubtless allowable. But if it was true that a majority of the judges interpreted the law to permit what Judge Swayne did, I do not think any but an inveterate and unreasonable enemy would impeach Judge Swayne for it. The chairman of the committee in his speech, and this illustrates his temper and moderation, declared, “There is not a syllable of testimony in this record and not a syllable of testimony anywhere on earth that any judge ever did this thing but Judge Swayne. That is what I say. I say it on my responsibility as a Member of this House.” That statement is on the face of it preposterous, an evidence of extreme bias, for unless the gentleman is gifted with omniscience he can not know that no such evidence exists. As a matter of fact I know that such evidence does exist and that the gentleman in his solemn asseveration is not only guessing, but is guessing wrong. I know that a certain judge was given the certificate to sign by the marshal, and said he had not spent \$10 a day. The marshal assured him the custom of the judges was to certify to \$10 regardless of their actual expenses, and quoted to him the names of judges of whom it might be said, in the graphic language of Macauley, “names which would add authority to truth and furnish some excuse even for error.” The very fact that two-thirds of all the judges do certify to exactly \$10 is of itself sufficient to my mind that Judge Swayne’s conduct corresponds with that of a majority of the bench. I do not think it is a fair or proper construction of the law. I do not think, now that attention has been called to it, the practice will be continued. But I do not think we wish to commence a general impeachment of our Federal judiciary, or that we wish to condemn Judge Swayne for an act shared in by a majority of his brethren.

I do not wish to be understood as approving all Judge Swayne’s conduct. I think he has shown a lack of judicial moderation, self-restraint, and impartiality. I fear his usefulness on the bench of Florida has ended. But mere unpopularity is not ground for impeachment. The fault may not be wholly his. It is most unfortunate and regrettable. I think I deplore it as much as anyone, for in my own State the whole bench of the United States and the supreme and superior courts of the State have the regard and respect and unreserved confidence of all our people without distinction of class or party. It ought to be so everywhere. You remember the famous sentence of Daniel Webster, “When the spotless ermine of the judicial robe rested on John Jay, it touched nothing less spotless than itself.” That is the type of judge we all wish to see on every bench. Judge Swayne falls far below it. If the question were to appoint him, I would oppose it; if it were to transfer him to another field, I would support it; if it were to accept his resignation, I would eagerly approve it; but I can not vote for his impeachment because I think the evidence is too stale, weak, and trivial to support that stately charge. [Applause.]

Mr. PALMER. Mr. Speaker, I have been in doubt for some days as to who is on trial in this case, whether it is Judge Swayne or the chairman of the subcommittee, the gentleman from Pennsylvania. I remember that when I used to practice in the criminal courts a good many years ago, the criminal lawyer who had an especially bad case and had no defense for his client always tried the prosecuting attorney, or the witnesses on the other side, or somebody else except the defendant. It was always an evidence, whenever the prosecuting attorney was particularly attacked, that the defendant had no defense. That seems to my feeble comprehension to furnish the reason why so many distinguished gentlemen who stand on this floor to apologize for Judge Swayne's conduct have found it necessary to assail the chairman of the subcommittee.

I had intended to pay my compliments to the gentleman from Maine [Mr. Littlefield], but the time that I have left is not sufficient to do that. [Laughter.] I shall endeavor to put into the Record some explanation of the charges that he has seen fit to make against the subcommittee and against myself. I do it not because they are of any special importance, not because I care particularly what his opinion is, but because this record will live after we are gone and when we are dead, and I do not purpose that the reputation of the subcommittee or my reputation shall be "done to death by slanderous tongues."

I am sure the committee strove laboriously and conscientiously to do their duty according to the best of their ability. It seems that in the opinion of the gentleman from Maine we failed. That, however, is not particularly important.

In view of the fact that the gentleman from Maine has seen fit to endeavor to create the impression that the subcommittee of the Judiciary that took the testimony in this case has left out of the record evidence favorable to Judge Swayne, and that the record is not complete, I want to state the exact truth of the whole matter.

He says, "I do not want to make any reflection on anybody, but I will say this: So far as I have been able to inquire every document apparently missing, or that has been lost in the shuffle, happens to be a document that would make for the interest of Judge Swayne. Now, I do not say that anybody suppressed them on that account. I am simply calling attention to the fact, and it is a fact, and an unpleasant fact."

The gentleman from Maine does not make a direct accusation that the subcommittee, or anyone on it, suppressed any testimony or document, but by an innuendo he endeavors to create that impression.

The particular document referred to by the gentleman from Maine, when the above statement was made, was a transcript of the stenographer's notes of testimony in the O'Neal contempt case taken before Judge Swayne. It appears by the record that Benjamin S. Liddon, Esq., counsel for complainants, states in his written brief as follows:

OPPRESSION OF W. C. O'NEAL IN ALLEGED CONTEMPT CASE.

In this case I file stenographer's report of the evidence.

Whether he did in fact file such report I am unable to say. I never saw it. Mr. Gillett says he did see it. It certainly was never read, opened, or alluded to by Mr. Liddon. When the record was prepared

for printing by Mr. Gillett and myself, under the direction of the committee, a great deal of matter, consisting of records in bankruptcy and admiralty cases, journal of the Florida Legislature, etc., which were not of the slightest importance to anybody, were omitted, because to print them would impose a large and useless expense on the United States.

The particular document in question was not printed because it was not among the papers.

Of course, the only point of importance is, Was it a paper the absence of which could be hurtful to Judge Swayne? As it was produced by the complainant's lawyer in support of his argument against Judge Swayne, presumptively, at least, it would make against and not for Judge Swayne, unless Mr. Liddon, complainant's lawyer, who produced it, was grossly incompetent. I do not think anyone will make that charge against Mr. Liddon. He has been chief justice of the Court of Appeals of the State of Florida, and is certainly an estimable gentleman, as well as an accomplished lawyer.

But all doubt on the subject is removed by the production of the document itself by the gentleman from Maine. It was produced to convict me of making a false and misleading statement in the majority report, page 21, where it is said:

The testimony of Greenhut and O'Neal was taken. None of the bystanders were sworn, nor was any other person sworn.

The record before me when that statement was made was a statement by Judge Liddon, who had filed the testimony taken before Judge Swayne as a part of his argument, as follows (p. 253):

No eyewitness of the difficulty testified, but only the two participants, O'Neal and Greenhut.

The record of the evidence taken on the trial of O'Neal now produced sustains that allegation in the main. The fight commenced in Greenhut's store, no one being present. Before it was over O'Neal and Greenhut were out on the sidewalk clinched. The persons who separated them did testify. No person saw or testified to what was said or done when the fight commenced inside the store, which was the material evidence.

That is the whole story, and with all the facts before him, the gentleman finds sufficient to warrant him in making the following statement:

Well, that would leave the case to depend altogether on Greenhut and O'Neal, and leave the impression, I submit, from the report of the gentleman that the court did not take the pains, and nobody else had taken the pains, to present all the facts. The gentleman suggests that the bystanders were not sworn. I do not see why the suggestion was made unless it is to question the propriety of the action of the judge.

The record now presented by the gentleman from Maine contains the opinion of Judge Swayne in the O'Neal case, and in it he says (p. 821, Congressional Record):

No living witness testified to what he saw, except the two parties.

Which is, as it seems to me, a perfect justification of the statement made in the report.

I submit that the gentleman from Maine could not have read the record which he produced to convict me of having made an unfounded statement for the purpose of prejudicing Judge Swayne's case or he would not have used it for that purpose. If he did not read it, he

stands convicted of a willingness to carelessly defame me and carelessly mislead this House. If he did read it, it convicts him of suppressing the fact, shown by Judge Swayne's opinion, that the case did, as to the material facts, rest entirely upon the testimony of Greenhut and O'Neal, and that, in the language of the judge, "no living witness testified to what he saw, except the two parties."

The gentleman from Maine is at liberty to accept either horn of the dilemma.

As to the more serious charge "that every document apparently missing, or that has been lost in the shuffle, happens to be a document that would make for the interest of Judge Swayne," I am content to refer the curious to the document in question, which is the only one specified as having been omitted, viz, the testimony taken in the O'Neal case, and the opinion of Judge Swayne.

If anyone takes the trouble to look he will see that Judge Swayne found the testimony of O'Neal and Greenhut as to what brought on the fight and as to who was the aggressor in irreconcilable conflict, and proceeded to settle the dispute in Greenhut's favor by reference to testimony of Greenhut's character as a peaceable man. This testimony had been offered by Greenhut himself and admitted most improperly against the vigorous protest of Blount, his counsel, who has been justly lauded as an able lawyer. Blount objected as follows:

Q. Are you acquainted with Mr. A. Greenhut?—A. I am.

Q. Are you acquainted with his reputation for peace and quiet?

Counsel for respondent objects to question upon the ground that his character for peace and quiet can not be put in evidence until it is attacked.

COUNSEL FOR PROSECUTION. If your honor please, as we understand it, the answer in this case charges acts on the part of the prosecutor that in our judgment do attack his character for peace and quiet.

The COURT. I understand that to be the character of the defendant's defense, is that he was attacked by a stronger and more powerful man, and one of his excuses set up in his defense. The question is whether it will be offered at this time or later.

COUNSEL FOR RESPONDENT. It does not make any difference now whether it is to be offered now or later. I had just as leave take my exception now.

We make another objection to this testimony, may it please the court, upon the ground that there is no issue made of the general character of Mr. Greenhut for peace and quiet, and that character of any kind can not be offered in evidence unless it has been attacked or impeached by the opposing side. We understand that your honor overrules it, and we save the exception.

COUNSEL FOR PROSECUTION. For the purpose of saving time, Mr. Blount consents, subject, of course, to his exception to your honor's ruling as in this witness, that the other character witnesses who have been summoned here will testify that they each know the reputation of Mr. Greenhut for peace and quietude, and that they would testify to the same and will testify that his reputation is that of a peaceable and quiet citizen.

Judge Swayne thought evidence of Greenhut's character as a peaceable man was competent because O'Neal intended to defend on the ground that "he was attacked by a stronger and more powerful man." How the peaceable character of Greenhut would tend to elucidate the question whether Greenhut was stronger and more powerful than O'Neal is not apparent.

Against the peaceable character of Greenhut, which this evidence established, the judge set off the bad character of O'Neal, who was forced to testify, against the protest of his counsel, that he had been convicted for carrying concealed weapons and had pleaded guilty of shooting across a public road, and had been sued by one Simmons for an assault and had judgment recorded against him for \$50. And he thus found that Greenhut told the truth, and O'Neal did not tell

the truth as to the origin of the affray, and as to who was the aggressor. Upon this finding Judge Swayne sentenced O'Neal, for contempt of court, to be imprisoned 60 days in the common jail.

This document is, in fact, a most damaging one to Judge Swayne. It convicts him of illiteracy, ignorance of law, and of a most flagrant abuse of his judicial power. Instead of insinuating that it was omitted from the record for the purpose of injuring Judge Swayne, the gentleman from Maine should return thanks that it was accidentally omitted.

Numerous, continuous, and persistent exceptions are taken by the gentleman from Maine to a statement in the majority report that Davis and Belden purged themselves of contempt on oath. I believe his statement was that I had made that statement five times, six times, and, in his speech as delivered, he said eleven times, thus rivaling Falstaff's tale of the men in buckram. He proves that I was wrong by pointing to the answer of Davis and Belden and showing that it was not sworn. I never said it was. I said the respondents purged themselves on oath. Simeon Belden testified:

Q. Did you file your answer—purge yourself?—A. Yes.

The gentleman from Maine now asserts and argues that the witness did not understand the question. Possibly he did not; but when the report, to which objection was taken, was made up, the committee did not have the benefit of the assistance of the gentleman from Maine. They relied upon the sworn testimony of the witness, and not upon the construction the gentleman from Maine might afterwards put upon it.

I intended also to make some observations, which I shall put into the Record, on the character and conduct of Judge Swayne, but time forbids.

#### JUDGE SWAYNE'S CONDUCT.

The conduct of Judge Swayne from the beginning to the end of this transaction has been most extraordinary. According to the testimony he had bargained for and concluded the purchase of a piece of land in Pensacola called "block 91." Nothing remained to consummate the transaction and vest the title in him or his wife, for whom he said he purchased the land, but the payment of the purchase money and the delivery of the deed. It must be presumed that Judge Swayne had satisfied himself in some way that the title to the land was good. He had either examined the title himself, had some one do it for him, or he had taken the word of some person in whom he had confidence that it was good. He certainly must have entertained a firm belief that the seller had a good title, otherwise he would not have bought.

When it appeared that the title was in dispute and that a suit to settle it was pending in his own court, proper delicacy would have prompted him not to wait for a request to recuse himself; he should have told the parties at once that he had negotiated for the land, had formed an opinion on the question of the validity of Mr. Edgar's title, and therefore he could not bring an unbiased mind to the determination of the question.

Again, the purchase of the land was not consummated because the owner, Mr. Edgar, refused to give anything but a quitclaim deed.



This was stated in a letter from his agent in Pensacola to Judge Swayne at Guyencourt:

In case the deed is not satisfactory to you, of course we will have to drop this deal or wait until you come home.

He wrote back:

You may omit block 91 and send papers for the other along.

What was there to prevent Judge Swayne from claiming his bargain after the suit was tried and the title of the seller established in his court? At least his decision to drop out block 91 was capable of being construed that for the present or until Edgar will give a warranty deed the transaction shall remain suspended.

Judge Swayne was guilty of great impropriety when he refused to get another judge to try the case. The counsel had good reason to hesitate about trying it before him. Why was he so insistent on trying the case? He certainly had a most excellent reason for declining to try. In accordance with his directions the agents had sent him a letter, as follows:

In reply to yours of the 22d instant we herewith inclose you new mortgage and note for you and Mrs. Swayne to sign, leaving amount blank in both mortgage and note. We inclose you receipts for the rent and fire insurance. You can fill in amount of mortgage and note.

The amount of cash payment was then left optional with Judge Swayne. It was a most extraordinary transaction. The agents were selling the land of their principal and allowing the buyer to fill in the blank in the mortgage left for the sum to remain on the property.

They were complaisant and Judge Swayne was friendly, evidently not adverse to helping them settle the title to block 91, which he did later by giving a binding instruction for defendants, thus justifying the fear of plaintiff's counsel.

Judge Swayne did not state the facts truthfully when he said he abandoned the purchase when the agent wrote him that the land was in litigation in his court. The agent wrote nothing of the kind. The reason he directed them to omit block 91 was because Mr. Edgar refused to give anything but a quitclaim deed.

Judge Swayne, in his first statement, in which he refused to recuse himself, said he had purchased the land for a relative. He suppressed the fact that the relative was his wife. Later in the week he stated the relative was his wife, and that she was to pay for the land with money received from her father's estate.

Judge Swayne forced the trial contrary to the practice in his court. His practice was to go through the criminal business and then take up the civil list and assign the cases for trial on days convenient for court and counsel.

The case of Florida McGuire was not called until late Saturday afternoon upon the conclusion of the criminal business. Judge Swayne said it should be tried the next Monday. Counsel pleaded earnestly that it would be impossible to get ready for trial Monday. There were 30 or 40 witnesses; none had been subpoenaed, relying upon the general practice of the court. Judge Swayne would not consent, but ordered the trial to proceed on Monday unless legal ground was laid for its continuance.

Under the circumstances is it very remarkable that the plaintiff's counsel hesitated to submit their case to the determination of Judge Swayne?

They agreed that Saturday night to discontinue the case of Florida McGuire in Judge Swayne's court and bring a suit against him in the State court to try the title to the land on the theory that he stood in the place of the owner, as he had, as they believed, purchased the land. The fact that the land was vacant and had never been in his possession was of no consequence, as the bringing of the suit would have been an admission on the part of the plaintiff that he, Judge Swayne, was in possession of the land. Of course Judge Swayne could have filed a disclaimer, which would have ended the case without the least harm to anybody.

Judge Swayne assumed as a fact, without proof and against the allegations of Davis and Belden, that the determination to discontinue the McGuire suit was not reached Saturday night and that the suit against him was brought to force him out of the trial of that case.

Not the least of the bad conduct of which this judge has been guilty is in his efforts to influence this House by newspaper opinions and editorials. The mails have been loaded with communications addressed to Members containing articles prepared in the interest of Judge Swayne by some one very familiar with the testimony and very skillful in garbling and suppressing the damaging portions. I have very little respect for a trial by newspapers. It is a tribunal not recognized by law and not well calculated to arrive at the exact truth. When a great metropolitan daily gives up two-thirds of a page two days in succession and many editorial lucubrations to a case pending before the House it may be assumed that it is not done for the health or amusement of the publishers. When copies of such publications and others of like character are forced into the correspondence of Members in advance of a vote on articles of impeachment against a judge it may be assumed that the purpose of going to such great expense is to influence the result.

If a common criminal, charged with stealing a ham to keep himself from starvation, should endeavor by indirect methods to influence the grand jury having his case in charge he would go behind the bars. In my opinion a judge who does the same thing ought not to be exempt from punishment.

I do not imagine that any Member of this House has been or could be swerved from the path of duty by any such means, but that does not mitigate the guilt of those who make the attempt. This attempt is a direct insult to the intelligence and integrity of this House which is not out of harmony with many of the actions of Judge Swayne since his unfortunate elevation to the bench.

As to the venomous attack made upon the subcommittee by the gentleman from Ohio, and particularly upon me, all I have to say is I regret that a man who has so distinguished himself in the service of his country, on the field of battle as a soldier and in her legislative halls as a statesman, should find it necessary to turn the attention of the House from a consideration of the grave charges against Judge Swayne to an inquiry whether a letter introduced in evidence to support a charge which was abandoned was sufficiently proved to warrant its introduction as an instrument of evidence. The letter has no more to do with this discussion than a leaf from a Sanscrit Bible. But if anyone is curious about it, I have it here, with some others acknowledged by Boone to be his. The most casual inspection, as well as all the surrounding circumstances, demonstrates that he

wrote it. His purpose was to hold the subcommittee up to ridicule and contempt, for what purpose I know not.

I regret that the distinguished gentleman from Ohio should have so far forgotten what is due to the dignity, honor, and intelligence of this House as to make a partisan appeal to its Members to vote against this impeachment, and to abuse the confidence of a friend by publishing in the Record a letter which will disgrace him forever.

He has again demonstrated the wisdom of the words uttered fifteen centuries before the Savior was born—

Great men are not always wise; neither do the aged understand judgment.

Now, let us see what this case actually is about, and where it now stands.

The people of the United States, especially those in the northern district of Florida, have some rights in this case which should not be overlooked by this House.

First. The charges made by the people against Charles Swayne are that he violated the law in that he did not reside in his district, as the law requires, from 1894 to 1900, a period of six years.

Second. That he falsely certified that his necessary expenses for travel and attendance while holding court outside of his district were \$10 per diem when in fact they were far less.

Third. That he used the property of a bankrupt corporation, which was in his hands, claiming that he had the right to it.

Fourth. That he imposed an unlawful sentence of fine and imprisonment on Davis and Belden for the purpose of punishing them for a personal affront.

Fifth. That he unlawfully sentenced O'Neal for a contempt of court in a case in which, under the law, no contempt was committed.

The best defense that some of the ablest and most ingenious lawyers in this House could make has been made.

To the first charge of nonresidence it is that it was not complained of soon enough.

To the second charge, that other judges committed the same offense.

To the third charge, it was improper, but it occurred 10 years ago and was not complained of by the parties in interest or the creditors of the railroad.

To the fourth, that Davis and Belden were guilty of a gross contempt and deserved punishment.

To the fifth, that O'Neal was also guilty of a grave offense and deserved punishment.

No answer is made to the charge that the punishment of the lawyers was unusually severe and imposed to gratify revenge.

I respectfully submit that none of these excuses should shield Judge Swayne from a trial before the Senate.

That he committed an impeachable offense in each case can not be denied truthfully by his defenders; but they seek to excuse his defects for the various reasons suggested.

Has the House any right to entertain excuses for a judge duly charged by the people when the evidence *prima facie* establishes unlawful acts?

Is it not the exclusive right of the constitutional triers to say whether Judge Swayne ought to be acquitted of the misdemeanors which he has confessedly committed?

The rights of the people of the United States are entitled to be considered—not alone the people of the judicial district over which Judge Swayne presides, but the right of all the people.

When this House impeached Judge Swayne at the bar of the Senate, it was in the name of all the people of the United States. Hence all the people of the United States are, in a sense, parties in interest. They are, in truth, vitally interested, because the purity of the judicial branch of the Government in every judicial district is essential to the preservation of property, liberty, and life.

Given the fact that a judge has violated the law, is it not certain that the only tribunal before which he can or ought to interpose a defense is that which the law fixes for his trial? Will you deny the people of the United States, who have shown you that Judge Swayne has been guilty of high misdemeanors in office, the right to have him tried for the offense?

The people came to their Representatives; they made out a case against Judge Swayne; they found that he had violated the law; they demand that he be tried for it.

The issue is very plain. We can not avoid it by saying that Judge Swayne became unpopular through the election cases or that he is persecuted because he is a northern man and a Republican. If either fact were true, it would not justify him in the least degree for any of the misdemeanors charged against him. I am a partisan, and all who know me will testify that after the strictest sect of our party have I lived a Republican; but I believe I serve my party best when I serve my country best. I belong to a party that claims a large share, if not a monopoly, of the intelligence, the honesty, and the patriotism of the country. In the last election the slogan was, from Maine to Georgia, "honesty, decency, courage." We stood for a candidate who is never tired of sounding the praises of these old-fashioned virtues. He stood and stands for the highest ideals of American manhood. We said on every stump that he and his party were against embezzlement and embezzlers, against thieves and thievery, and against dishonesty in every form in high places and in low places. And the people believed us, and by a majority of more than 2,500,000 votes approved the doctrines of our party and the ideals of our candidate. Now we have one chance to make the claim good. The Representatives of that party, that candidate, and of those principles are asked to shield a judge from trial who has been guilty of grave misbehaviors that have smirched his good name and brought his great office into contempt. They are asked to overlook his offenses and grant him a pardon because he is a Republican; because he is persecuted by men who think he has wronged them; because some of the offenses were committed 10 years ago; because other judges have sinned against the law.

This Republican House can let Charles Swayne go free without a trial, but if we do we should abandon the battle cry "honesty, decency, courage"; and when we do that, let us beware lest, as Samson brought down the temple of Dagon upon the heads of his enemies, we bring down the temple of our party upon the heads of our friends.

Let us not imagine for a moment that lawyers' excuses for Judge Swayne's misdeeds will for a moment deceive the plain people.

who believe that the law and the law's penalties were made for the high and the low alike.

Do not do him and the people of the United States a wrong by refusing him a trial and a chance to clear his good name. Send him to the Senate, and, for the honor and credit of the judiciary, I will join his friends in a prayer that God may send him a safe deliverance.

The assertion has been freely made by Members on the floor that they would never vote to impeach a northern judge on the complaint of southern Democrats. I thought the war was over. We have been boasting that the South was again marching to the music of the Union. We have pointed with pride to the fact that the blue and the gray pressed shoulder to shoulder up San Juan Hill, following the Stars and Stripes, and that they mingled their blood in defense of the flag.

We have boasted that Wheeler and Fitzhugh Lee, who won distinction under the stars and bars, have taken command under the Stars and Stripes. Is it all a sad mistake? Is it true that justice is to be denied the people of the northern district of Florida because they are Democrats and were Confederates? Is it true that the battles fought with bullets are, after 40 years have passed away, always to be followed by campaigns of hate?

I stand here to say that it is a bitter, burning shame that an attempt has been deliberately made to inject political prejudice into this case and to thereby influence votes against the impeachment of Charles Swayne.

I paraphrase the words of the greatest of American statesmen and orators when he said "Men of New England, conquer your prejudices." I say, men of the North, conquer your prejudices.

I beseech you to stand by the claim we have made that we are an honest party, composed of honest men; that we hate dishonesty wherever found, and that we are willing to turn the rascals out. [Prolonged applause on the Democratic side.]

Mr. Speaker, I ask for a vote on the first three articles.

Mr. LITTLEFIELD. Mr. Speaker, I move that we do now lay upon the table the first three articles, which relate to the false certificates.

The SPEAKER. That motion takes precedence. The gentleman from Maine moves that the first three articles do lie upon the table.

Mr. GOLDFOGLE. Mr. Speaker, I ask that they be read.

The SPEAKER. Without objection, the first three articles will be read.

The Clerk read as follows:

ARTICLE 1. That the said Charles Swayne, at Waco, in the State of Texas, on the 20th day of April, 1897, being then and there a United States district judge in and for the northern district of Florida, did then and there, as said judge, make and present to R. M. Love, then and there being the United States marshal in and for the northern district of Texas, a false claim against the Government of the United States in the sum of \$230, then and there knowing said claim to be false, and for the purpose of obtaining payment of said false claim, did then and there as said judge, make and use a certain false certificate then and there knowing said certificate to be false, said certificate being in the words and figures following:

UNITED STATES OF AMERICA, *Northern District of Texas*, ss:

I, Charles Swayne, district judge of the United States for the northern district of Florida, do hereby certify that I was directed to and held court at the city of Waco, in the northern district of Texas, 23 days, commencing on the 20th day of



April, 1897; also, that the time engaged in holding said court, and in going to and returning from the same, was 23 days, and that my reasonable expenses for travel and attendance amounted to the sum of two hundred and thirty dollars and \_\_\_\_\_ cents, which sum is justly due me for such attendance and travel.

CHAS. SWAYNE, *Judge.*

WACO, *May 15, 1897.*

Received of R. M. Love, United States marshal for the northern district of Texas, the sum of 230 dollars and no cents, in full payment of the above account.  
\$230.

CHAS. SWAYNE.

when in truth and in fact, as the said Charles Swayne then and there well knew, there was then and there justly due the said Swayne from the Government of the United States and from said United States marshal a far less sum, whereby he has been guilty of a high crime and misdemeanor in his said office.

ART. 2. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida entered upon the duties of his office, and while in the exercise of his office as judge, as aforesaid, the said Charles Swayne was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed \$10 per diem, to be paid upon his certificate by the United States marshal for the district in which the court was held, and was forbidden by law to receive compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were \$10 per diem while holding court at Tyler, Tex., 24 days, commencing December 3, 1900, and 7 days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of John Grant, the United States marshal for the eastern district of Texas, the sum of \$310, when the reasonable expenses incurred and paid by the said Charles Swayne for travel and attendance did not amount to the sum of \$10 per diem.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, the crime of obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

ART. 3. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office, of judge as aforesaid was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed \$10 per diem, to be paid upon his certificate by the United States marshal of the district in which the court was held, and was forbidden by law to receive any compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel in going to and coming from and attendance were \$10 per diem while holding court at Tyler, Tex., 35 days from January 12, 1903, and 6 days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States by the hand of A. J. Houston, the United States marshal for the eastern district of Texas, the sum of \$410, when the reasonable expenses of the said Charles Swayne incurred and paid by him during said period were much less than said sum.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

Mr. PALMER. Mr. Speaker, on this motion to lay on the table I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 159, nays 166, answering “present” 6, not voting 54, as follows:

Yeas, 159.—Acheson, Adams (Pa.), Adams (Wis.), Allen, Ames, Babcock, Bartholdt, Bates, Beidler, Bell (Cal.), Bingham, Birdsall, Bishop, Bonyng, Boutell, Bowerstock, Bradley, Brandegee, Brick, Brown (Pa.), Brown (Wis.), Brownlow, Buckman, Burke, Burleigh, Butler (Pa.), Calderhead, Campbell, Capron, Cassel, Conner, Cooper (Pa.), Cousins, Cromer, Crumpacker, Currier, Curtis, Cushman, Dalzell, Daniels, Davidson, Davis (Minn.), Dixon, Dovener, Draper, Dresser, Dun-

well, Evans, Foss, Foster (Vt.), Fowler, French, Fuller, Gaines (W. Va.), Gardner (Mich.), Gardner (N. J.), Gillet (N. Y.), Gillett (Cal.), Gillett (Mass.), Goebel, Graff, Greene, Grosvenor, Hamilton, Haskins, Hedge, Henry (Conn.), Hepburn, Hildebrant, Hill (Conn.), Hinshaw, Hitt, Hogg, Howell (N. J.), Howell (Utah), Huff, Hull, Humphrey (Wash.), Jackson (Md.), Jackson (Ohio), Jones (Wash.), Kennedy, Ketcham, Kinkaid, Knapp, Knopf, Knowland, Kyle, Lacey, Lafean, Landis (Chas. B.), Landis (Frederick), Lawrence, Lilley, Littlefield, Longworth, Lorimer, Loud, Loudenslager, Lovering, McCall, McCleary (Minn.), McCreary (Pa.), McLachlan, McMorran, Mahon, Mann, Marsh, Marshall, Martin, Miller, Minor, Mondell, Moon (Tenn.), Morgan, Mudd, Murdock, Needham, Nevin, Norris, Overstreet, Parker, Patterson (Pa.), Payne, Porter, Prince, Reeder, Rodenberg, Scott, Shiras, Sibley, Slemph, Smith (Ill.), Smith (Samuel W.), Smith (Wm. Alden), Smith (N. Y.), Smith (Pa.), Snapp, Southard, Southwick, Steenerson, Sterling, Stevens (Minn.), Sulloway, Tawney, Thayer, Thomas (Ohio), Tirrell, Townsend, Van Voorhis, Volstead, Vreeland, Warner, Warnock, Watson, Weems, Wood, Young, The Speaker.

Nays, 166.—Adamson, Aiken, Baker, Bankhead, Bartlett, Bassett, Beall (Tex.), Bede, Benton, Bowers, Bowie, Brantley, Breazeale, Broussard, Burleson, Byrd, Caldwell, Candler, Cassingham, Clark, Clayton, Cochran (Mo.), Cooper (Wis.), Cowherd, Croft, Darragh, Davey (La.), Davis (Fla.), Dayton, De Armond, Denny, Dickerman, Dinsmore, Dougherty, Driscoll, Field, Finley, Fitzgerald, Flood, Foster (Ill.), Gaines (Tenn.), Garber, Garner, Gibson, Gillespie, Glass, Gooch, Goulden, Granger, Gregg, Griggs, Gudger, Hamlin, Hardwick, Harrison, Haugen, Hay, Hearst, Heflin, Henry (Tex.), Hill (Miss.), Hitchcock, Holliday, Hopkins, Houston, Howard, Hughes (N. J.), Humphries (Miss.), Hunt, James, Jenkins, Johnson, Jones (Va.), Kehoe, Kitchin (Claude), Kitkin (Wm. W.), Kline, Kluttz, Lamar (Fla.), Lamar (Mo.), Lamb, Lester, Lever, Lewis, Lind, Lindsay, Little, Livernash, Livingston, Lloyd, Lucking, McAndrews, McCarthy, McLain, McNary, Macon, Maddox, Olmsted, Otjen, Padgett, Page, Palmer, Patterson (N. C.), Patterson (Tenn.), Pearre, Perkins, Pierce, Pinckney, Pou, Pujo, Rainey, Randell (Tex.), Ransdell (La.), Reid, Rhea, Richardson (Ala.), Richardson (Tenn.), Rider, Rixey, Robb, Roberts, Robinson (Ark.), Robinson (Ind.), Rucker, Russell, Ryan, Scudder, Schackleford, Sheppard, Sherley, Shober, Sims, Slayden, Small, Smith (Iowa), Smith (Ky.), Smith (Tex.), Snook, Spalding, Sparkman, Sperry, Spight, Stafford, Stephens (Tex.), Sullivan (Mass.), Sulzer, Swanson, Talbott, Taylor, Thomas (Iowa), Thomas (N. C.), Trimble, Vandiver, Van Duzer, Wade, Wallace, Wanger, Webb, Webber, Weisse, Wiley (Ala.), Williams (Miss.), Woodyard, Wynn, Zenor.

Answered "Present," 6.—Cockran (N. Y.), Goldfogle, Hughes (W. Va.), Powers (Me.), Wachter, Wilson (Ill.).

Not voting, 54.—Alexander, Badger, Benny, Brooks, Brundidge, Burgess, Burkett, Burnett, Burton, Butler (Mo.), Castor, Connell, Cooper (Tex.), Crowley, Deemer, Douglas, Dwight, Emerich, Esch, Fitzpatrick, Flack, Fordney, Gardner (Mass.), Gilbert, Griffith, Hemenway, Hermann, Hunter, Keliher, Legare, Littauer, McDermott, Maynard, Meyer (La.), Miers (Ind.), Moon (Pa.), Morrell, Otis, Powers (Mass.), Robertson (La.), Ruppert, Scarborough, Sherman, Shull, Southall, Stanley, Sullivan (N. Y.), Tate, Underwood, Wadsworth, Wiley (N. J.), Williamson, Wilson (N. Y.), Wright.

So the motion to lay on the table was rejected.

The Clerk announced the following pairs:

For session: Mr. Deemer with Mr. Shull; Mr. Sherman with Mr. Ruppert.

Until further notice: Mr. Castor with Mr. Emerich; Mr. Esch with Mr. Stanley; Mr. Morrell with Mr. Underwood; Mr. Connell with Mr. Butler of Missouri; Mr. Burkett with Mr. Robertson of Louisiana; Mr. Dwight with Mr. Keliher.

For the day: Mr. Douglas with Mr. McDermott; Mr. Wright with Mr. Wilson of New York; Mr. Williamson with Mr. Fitzpatrick; Mr. Otis with Mr. Badger; Mr. Hunter with Mr. Scarborough; Mr. Herman with Mr. Benny; Mr. Gardner of Massachusetts with Mr. Burnett; Mr. Fordney with Mr. Griffith; Mr. Alexander with Mr. Sullivan of New York; Mr. Flack with Mr. Tate.

For Swayne case: Mr. Brooks with Mr. Miers of Indiana; Mr. Hemenway with Mr. Cooper of Texas; Mr. Hughes of West Virginia with Mr. Gilbert; Mr. Wilson of Illinois with Mr. Legare; Mr. Wachter with Mr. Wadsworth; Mr. Moon of Pennsylvania with Mr. Brundidge; Mr. Littauer with Mr. Meyer of Louisiana; Mr. Burton with Mr. Burgess; Mr. Powers of Massachusetts with Mr. Powers of Maine.

On this vote: Mr. Wiley of New Jersey with Mr. Maynard.

Mr. POWERS of Maine. Mr. Speaker, before the vote is announced I desire to withdraw my vote and answer "present," because I

understand that it is claimed that I should continue my pair with the gentleman from Massachusetts [Mr. Powers] instead of having him paired with the gentleman from New York [Mr. Sullivan].

The SPEAKER. Call the gentleman's name.

The name of Mr. Powers of Maine was called, and he voted "present."

The SPEAKER. Call my name.

The name of Mr. Cannon was called, and he voted "aye."

The result of the vote was then announced as above recorded.

Mr. PALMER. Mr. Speaker, I move the adoption of the first three articles, being those relating to the fee business.

The SPEAKER. The gentleman from Pennsylvania asks for a vote on the adoption of the first three articles.

Mr. LITTLEFIELD. Upon that question I ask for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 165, nays 160, answered "present" 3, not voting 56, as follows:

Yeas, 165.—Adamson, Aiken, Baker, Bankhead, Bartlett, Bassett, Beall (Tex.), Bede, Benton, Bowers, Bowie, Brantley, Breazeale, Broussard, Burleson, Byrd, Caldwell, Candler, Cassingham, Clark, Clayton, Cochran (Mo.), Cooper (Wis.), Cowherd, Croft, Darragh, Davey (La.), Davis (Fla.), Dayton, De Armond, Denny, Dickerman, Dinsmore, Dougherty, Driscoll, Field, Finley, Fitzgerald, Flood, Foster (Ill.), Gaines (Tenn.), Garber, Garner, Gibson, Gillespie, Glass, Goldfogle, Gooch, Goulden, Granger, Gregg, Griggs, Gudger, Hamlin, Hardwick, Harrison, Haugen, Hay, Hearst, Heflin, Henry (Tex.), Hill (Miss.), Hitchcock, Holliday, Hopkins, Houston, Howard, Hughes, (N. J.), Humphreys (Miss.), Hunt, James, Jenkins, Johnson, Jones (Va.), Kehoe, Kitchin (Claude), Kitchin (Wm. W.), Kline, Kluttz, Lamar (Fla.), Lamar (Mo.), Lamb, Lester, Lever, Lewis, Lind, Lindsay, Little, Livernash, Livingston, Lloyd, Lucking, McAndrews, McCarthy, McLain, McNary, Macon, Maddox, Olmsted, Otjen, Padgett, Page, Palmer, Patterson (N. C.), Patterson (Tenn.), Pearre, Perkins, Pierce, Pinckney, Pou, Pujo, Rainey, Randell (Tex.), Ransdell (La.), Reid, Rhea, Richardson (Ala.), Richardson (Tenn.), Rider, Rixey, Robb, Roberts, Robinson (Ark.), Robinson (Ind.), Rucker, Russell, Ryan, Scudder, Shackelford, Sheppard, Sherley, Shober, Sims, Slayden, Small, Smith (Iowa), Smith (Ky.), Smith (Tex.), Snook, Spalding, Sparkman, Sperry, Spight, Stafford, Stephens (Tex.), Sullivan (Mass.), Sulzer, Swanson, Talbott, Taylor, Thomas (Iowa), Thomas (N. C.), Trimble, Vandiver, Van Duzer, Wade, Wallace, Wanger, Webb, Weisse, Wiley (Ala.), Williams (Ill.), Williams (Miss.), Wynn, Zenor.

Nays, 160.—Acheson, Adams (Pa.), Adams (Wis.), Allen, Ames, Babcock, Bartholdt, Bates, Beidler, Bell (Cal.), Bingham, Birdsall, Bishop, Bonyng, Boutell, Bowersock, Bradley, Brandegee, Brick, Brown (Pa.), Brown (Wis.), Brownlow, Buckman, Burke, Burleigh, Butler (Pa.), Calderhead, Campbell, Capron, Cassel, Conner, Cooper (Pa.), Cousins, Cromer, Crumpacker, Currier, Curtis, Cushman, Datzell, Daniels, Davidson, Davis (Minn.), Dixon, Dovener, Draper, Dresser, Dunwell, Evans, Foss, Foster (Vt.), Fowler, French, Fuller, Gaines (W. Va.), Gardner (Mich.), Gardner (N. J.), Gillet (N. Y.), Gillett (Cal.), Gillett (Mass.), Goebel, Graff, Greene, Grosvenor, Hamilton, Haskins, Hedge, Henry (Conn.), Hepburn, Hildebrandt, Hill (Conn.), Hinshaw, Hitt, Hogg, Howell (N. J.), Howell (Utah), Huff, Hull, Humphrey (Wash.), Jackson (Md.), Jackson (Ohio), Jones (Wash.), Kennedy, Ketcham, Kinkaid, Knapp, Knopf, Knowland, Kyle, Lacey, Lafean, Landis (Chas. B.), Landis (Frederick), Lawrence, Lilley, Littlefield, Longworth, Lorimer, Loud, Loudenslager, Lovering, McCall, McCleary (Minn.), McCreary (Pa.), McLachlan, McMorran, Mahon, Mann, Marsh, Marshall, Martin, Miller, Minor, Mondell, Moon (Tenn.), Morgan, Mudd, Murdock, Needham, Nevin, Norris, Overstreet, Parker, Patterson (Pa.), Payne, Porter, Prince, Reeder, Rodenberg, Scott, Shiras, Sibley, Slomp, Smith (Ill.), Smith (Samuel W.), Smith (Wm. Alden), Smith (N. Y.), Smith (Pa.), Snapp, Southard, Southwick, Steenerson, Sterling, Stevens (Minn.), Sulloway, Tawney, Thayer, Thomas (Ohio), Tirrell, Townsend, Van Voorhis, Volstead, Vreeland, Warner, Warnock, Watson, Webber, Weems, Wood, Woodyard, Young.

Answered "Present," 3.—Cockran (N. Y.), Hughes, (W. Va.), Wilson (Ill.).

Not voting, 56.—Alexander, Badger, Benny, Brooks, Brundidge, Burgess, Burkett, Burnett, Burton, Butler (Mo.), Castor, Connell, Cooper (Tex.), Crowley, Deemer, Douglas, Dwight, Emerich, Esch, Fitzpatrick, Flack, Fordney, Gardner (Mass.),

Gilbert, Griffith, Hemenway, Hermann, Hunter, Keliher, Legare, Littauer, McDermott, Maynard, Meyer (La.), Miers (Ind.), Moon (Pa.), Morrell, Otis, Powers (Me.), Powers (Mass.), Robertson (La.), Ruppert, Scarborough, Sherman, Shull, Southall, Stanley, Sullivan (N. Y.), Tate, Underwood, Wachter, Wadsworth, Wiley (N. J.), Williamson, Wilson (N. Y.), Wright.

So the first three articles were adopted.

The result of the vote was then announced as above recorded.

Mr. PALMER. Mr. Speaker, I move the adoption of the fourth and fifth articles.

The SPEAKER. The gentleman from Pennsylvania moves the adoption of the fourth and fifth articles.

Mr. OLMSTED. Mr. Speaker, I shall ask for a division of those articles unless the gentleman will accept an amendment that I have to each of them.

Mr. PALMER. I decline to accept any amendment.

Mr. LITTLEFIELD. And upon this I call for the yeas and nays.

Mr. COCKRAN of New York. May I ask that the articles be read?

The SPEAKER. Without objection, the articles will be read.

The Clerk read as follows:

ART. 4. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida entered upon the duties of his office, and while in the exercise of his office of judge as aforesaid, heretofore, to wit, A. D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa & Key West Railroad Co. for the purpose of transporting himself, his family, and friends from Guyencourt, in the State of Delaware, to Jacksonville, Fla., the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors.

The said car was supplied with provisions by the said receiver, which were consumed by said Swayne and his friends, and was provided with a conductor or porter at the cost and expense of said railroad company, and with transportation over connecting lines. The expenses of the trip were paid by the said receiver out of the funds of the said Jacksonville, Tampa & Key West Railroad Co., and the said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditure as a part of the necessary expenses of operating said road. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner, and under a claim of right, for the reason that the same was in the hands of a receiver appointed by him.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 5. That the said Charles Swayne was duly appointed, commissioned, and confirmed as judge of the United States in and for the northern district of Florida, and entered upon the duties of said office, and while in the exercise of his office of judge, as aforesaid, heretofore, to wit, A. D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa & Key West Railroad Co. for the purpose of transporting himself, his family, and friends from Jacksonville, Fla., to California, said railroad company being at the time in the possession of a receiver appointed by the said Charles Swayne, judge as aforesaid, on the petition of creditors.

The car was supplied with some provisions by the said receiver which were consumed by the said Swayne and his friends, and it was provided with a porter at the cost and expense of the railroad company, and also with transportation over connecting lines. The wages of said porter and the cost of said provisions were paid by the said receiver out of the funds of the Jacksonville, Tampa & Key West Railroad Co., and the said Charles Swayne, acting as judge as aforesaid, allowed the credits claimed by the said receiver for and on account of the said expenditures as a part of the necessary expenses of operating the said railroad. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner under a claim of right, alleging that the same was in the hands of a receiver appointed by him and he, therefore, had a right to use the same.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of high misdemeanor in office.



Mr. OLMSTED. I offer the following amendment to article 4.

The SPEAKER. The gentleman from Pennsylvania offers the following amendment to article 4, which the Clerk will report.

Mr. OLMSTED. It may save time to say that I want to offer a substantially similar amendment to article 5, and if it is agreeable to the gentleman in charge of the bill the two amendments might be considered together. I do not wish to take up any unnecessary time.

Mr. PALMER. I have no objection to considering the two amendments together.

The SPEAKER. The Clerk will report the first amendment.

The Clerk read as follows:

Amend article 4 by striking out the words "unlawfully appropriate to his own" and insert in place thereof the words "at the instance of the receiver." Also strike out the words "allowed the credit claimed by the said receiver for and on account of the said expenditure as a part of the necessary expenses of operating said road." Also strike out the words "to the owner and under a claim of right for the reason" and insert in place thereof the word "knowing." Also insert, after the word "him" and just before the word "wherefore," the following: "and that the expenses connected with the operation and transportation of said car and the cost of said provisions would be either specifically or in the general terms included among the expenditures of the receiver which he, as such judge, would be called upon to approve"; so that the article as amended will read as follows:

"ART. 4. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office of judge as aforesaid, heretofore, to wit, A. D. 1893, did use, at the instance of the receiver, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa & Key West Railroad Co. for the purpose of transporting himself, his family, and friends from Guyencourt, in the State of Delaware, to Jacksonville, Fla., the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors.

"The said car was supplied with provisions by the said receiver, which were consumed by said Swayne and his friends, and was provided with a conductor or porter at the cost and expense of said railroad company, and with transportation over connecting lines. The expenses of the trip were paid by the said receiver out of the funds of the said Jacksonville, Tampa & Key West Railroad Co. The said Charles Swayne, judge as aforesaid, used the said property without making compensation, knowing that the same was in the hands of a receiver appointed by him, and that the expenses connected with the operation and transportation of said car and the cost of said provisions would be either specifically or in general terms included among the expenditures of the receiver, which he, as such judge, would be called upon to approve.

"Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office."

The SPEAKER. The Chair understands the gentleman from Pennsylvania [Mr. Olmsted] desires to offer an amendment to article 5 also, and to have the two amendments voted upon together.

Mr. OLMSTED. That is right.

Mr. PALMER. Are the two amendments identical?

The SPEAKER. The Chair does not know.

Mr. WILLIAMS of Mississippi. If they are not identical, they cannot be voted on together.

Mr. OLMSTED. Oh, yes; one amendment relates to article 4 and the other to article 5. They apply to two different articles.

Mr. LITTLEFIELD. The purpose of the amendment is simply to change the form of the articles to carry out the facts according to the idea of the gentleman from Pennsylvania [Mr. Olmsted].

Mr. WILLIAMS of Mississippi. Can the vote be taken on both amendments at the same time?

The SPEAKER. It can be done by unanimous consent; not otherwise.



Mr. COCKRAN of New York. The clerk was in the act of reporting both specifications when the gentleman from Pennsylvania [Mr. Olmsted] interposed his amendment. I do not want to detain the House by the unnecessary reading of the second of these two articles. If the gentleman from Pennsylvania will inform us that article 5 is practically the same charge as article 4, except that it refers to the California trip, it will then be unnecessary to read it.

Mr. OLMSTED. Mr. Speaker, I suggest that the amendment to the other article be read for the information of the House, and then we could ask unanimous consent to vote on the two amendments together afterwards. I now ask that the amendment be read.

Mr. COCKRAN of New York. Then let the specification be read also.

Mr. WILLIAMS of Mississippi. It should be read as proposed to be amended.

The SPEAKER. The clerk will report the amendment to the next article, and if there be no objection the clerk will report article 5 as it would read if amended.

The Clerk read as follows:

Amend article 5 so that it will read as follows:

"ART. 5. That the said Charles Swayne was duly appointed, commissioned, and confirmed as judge of the United States in and for the northern district of Florida, and entered upon the duties of said office, and while in the exercise of his office of judge, as aforesaid, heretofore, to wit, A. D. 1893, did use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa & Key West Railroad Co. for the purpose of transporting himself, his family, and friends from Jacksonville, Fla., to California, said railroad company being at the time in the possession of a receiver appointed by the said Charles Swayne, judge as aforesaid, on the petition of creditors.

"The car was provided with a porter at the cost and expense of the railroad company, and also with transportation over connecting lines. The wages of said porter were paid by the said receiver out of the funds of the Jacksonville, Tampa & Key West Railroad Co., and the said Charles Swayne knew that as judge he would be called upon to approve the accounts of said receiver, including the said expenditures.

"Whereupon the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of high misdemeanor in office."

The SPEAKER. If there be no objection, the question will be taken on agreeing to the two amendments.

Mr. OLMSTED. Mr. Speaker, a parliamentary inquiry. Is the amendment debatable at this time?

The SPEAKER. No.

Mr. OLMSTED. Then I ask unanimous consent for five minutes, to cover both amendments.

The SPEAKER. The gentleman asks unanimous consent to address the house for five minutes upon the two amendments. Is there objection?

Mr. PALMER. There is no objection, if we can have five minutes on this side.

Mr. OLMSTED. I will couple with it the request that there be five minutes also on that side.

The SPEAKER. And five minutes to those opposed to the amendment. Is there objection?

There was no objection.

Mr. OLMSTED. Mr. Speaker, I voted for the first three articles, and shall vote for some or all of the others, but I do not wish knowingly to do an injustice to Judge Swayne or to appear to charge him with something which does not appear to me to be at all substantiated by the evidence. The change which I propose is perhaps not very mate-

rial, but it may be. He is charged in article 4 and again in article 5, as they now stand, with having appropriated to his own use, under a claim of right, the car of a certain railroad company and the provisions therein under the claim that, being in the hands of a receiver, he had a right to use them. Now, the facts are, according to the testimony of Judge Swayne himself and of Mr. Axtell, attorney for the receiver, that Judge Swayne did not appropriate the car, nor demand it, nor claim it as a right. It was the receiver's own suggestion. The receiver tendered Judge Swayne the car and the provisions therein, and Judge Swayne accepted them.

It was improper, in my judgment, for him to use them, the provisions particularly, as they would have to be paid for by the receiver out of the funds of the railroad company, and the expenditure the judge knew would have to be approved by him. But he did not take the car forcibly, nor under a claim of right. He did not demand it; he did not claim it. He simply accepted the courtesy when it was tendered him by the receiver.

He stands in the position of a celebrated author of whom the critic said, speaking of the book and the author: "He stands with one foot in the past century, and with the other hails the dawn of modern thought." [Laughter.] Judge Swayne stands with one foot back in that car in 1893, in the last decade of the past century; but the thought that he had a right to it, because it was in the hands of a receiver appointed by the court, was not in anybody's mind then. It is purely modern. It didn't even originate with Judge Swayne, but sprung from a leading question proposed by the chairman of the subcommittee, in which he said: "You see that it was the privilege of the court to use that car because the railroad was in the hands of a receiver?" And Judge Swayne said, "Yes; that is the reason why it was used"; and then he said that he had 10 railroads in his hands in six years. He was asked: "You fancied you had a right to use the property of any railroad in the hands of the court whenever you pleased without rendering any compensation?" And then the judge hedged and said: "I would not say that."

So the first thought of having a right to use it because it was in the hands of a receiver occurred when the leading question was asked him, and he foolishly gave that silly excuse for acting improperly, and then, upon reflection, took it back. But I am not willing to say by my vote that he demanded and appropriated this car and provisions to his own use under a claim of right when, as a matter of fact, what he did was to improperly accept the courtesy of the receiver.

My amendments simply make these articles conform to the facts as disclosed by the record. I do not suppose anybody will go so far as to say that for a judge to ride in a private car is a high crime and misdemeanor which ought to make him the subject of impeachment. Ordinarily it is a question of taste and propriety to be determined by the judge himself according to the circumstances of the particular case. Here it was plainly improper. This car was provisioned for a trip of several days at the expense of the receiver. The judge knew, of course, that the expenditures made on behalf of himself and his family would, directly or indirectly, go into the receiver's accounts, which he, as judge, would be called upon to approve, and would thus come out of and diminish to that extent the estate of the bankrupt corporation. This no one will attempt to justify; but we

ought not, in adopting articles of impeachment, include things which have not occurred. He never did appropriate the car and the provisions under a claim of right, as charged in articles 4 and 5, but he did improperly use them. They were freely tendered him by the receiver.

Mr. PALMER. Mr. Speaker, I do not agree to these amendments. The committee prepared these articles and gave a great deal of thought and attention to them, and they prepared them so that they would be supported by the evidence. There was no difference of opinion among the committee as to the form. This is an indictment, and if the gentleman from Pennsylvania thinks he knows more than the committee, if he thinks he knows more about the evidence and the argument, he has the right to have his amendments voted upon. We were of the opinion that the evidence supported the articles as they are drawn, and these amendments simply take the entrails out of the articles.

Mr. COCKRAN of New York. May I ask the gentleman a question?

Mr. PALMER. Certainly.

Mr. COCKRAN of New York. Is not the custody of the receiver the custody of the court, and can there be any distinction between taking property from the receiver and converting it to his own use? Is not the custody of the receiver his own custody?

Mr. PALMER. Certainly.

Mr. COCKRAN of New York. Then what is the point in making that distinction?

Mr. PALMER. Judge Swayne claims the right now, and he said he claimed it then, to take the car and use it because it was in the hands of the court. Now, this question was based on the written statement of Judge Swayne, which occupies 13 pages, in which he claimed that right; and in order to make it certain, I asked the questions for the very purpose of developing the idea whether he claimed it as a right or not. He claimed it then and he claims it now.

Mr. OLMSTED. He did not claim it in the 13 pages nor anywhere else, save in answer to one of your questions, when he appeared to; but in the very next answer he denied the position which your question had made him assume.

The SPEAKER. The question is on agreeing to the amendments offered by the gentleman from Pennsylvania.

The question was taken, and the amendments were rejected.

The SPEAKER. The question is on agreeing to articles 4 and 5.

The question was taken; and there were—yeas, 162; nays, 138; answered “present,” 6; not voting, 78, as follows:

Yeas, 162.—Adamson, Aiken, Baker, Bartlett, Bassett, Beall (Tex.), Bede, Bell (Cal.), Benton, Bishop, Bowers, Brantley, Breazeale, Broussard, Burleson, Byrd, Caldwell, Candler, Cassingham, Clark, Clayton, Cochran (Mo.), Cockran (N. Y.), Cooper (Wis.), Cowherd, Croft, Davey (La.), Davis (Fla.), Dayton, De Armond, Denny, Dickerman, Dinsmore, Dougherty, Driscoll, Field, Finley, Fitzgerald, Fitzpatrick, Flood, Foster (Ill.), Gaines (Tenn.), Garner, Gibson, Gillespie, Glass, Goldfogle, Gooch, Goulden, Granger, Gregg, Griggs, Gudger, Hamlin, Hardwick, Harrison, Hay, Hearst, Heflin, Henry (Tex.), Hill (Miss.), Hitchcock, Hopkins, Houston, Howard, Hughes (N. J.), Humphreys (Miss.), Hunt, James, Jenkins, Johnson, Jones (Va.), Jones (Wash.), Kinkaid, Kitchin (Claude), Kitchin (Wm. W.), Kline, Kluttz, Lamar (Fla.), Lamar (Mo.), Lamb, Lester, Lever, Lewis, Lindsay, Little, Livernash, Livingston, Lloyd, Lucking, McAndrews, McLain, McNary, Macon, Maddox, Mann, Maynard, Moon (Tenn.), Murdock, Otjen, Padgett, Page, Palmer, Patterson (N. C.), Patterson (Tenn.), Perkins, Pierce, Pinckney, Pou, Pujo, Randell (Tex.), Ransdel (La.), Rhea, Richardson (Ala.), Richardson (Tenn.), Rixey, Robb, Roberts, Robins

(Ark.), Robinson (Ind.), Rucker, Russell, Ryan, Scudder, Shackelford, Sheppard, Sherley, Shober, Sims, Slayden, Small, Smith (Iowa), Smith (Ky.), Smith (Tex.), Snook, Sparkman, Sperry, Spight, Stafford, Steenerson, Stephens (Tex.), Sullivan (Mass.), Sulzer, Swanson, Talbott, Taylor, Thayer, Thomas (N. C.), Tirrell, Trimble, Vandiver, Van Duzer, Wade, Wallace, Wanger, Webb, Weisse, Wiley (Ala.), Williams (Ill.), Williams (Miss.), Wynn, and Zenor.

Nays, 138.—Acheson, Adams (Wis.), Allen, Ames, Babcock, Bartholdt, Bates, Beidler, Bingham, Birdsall, Bonyng, Boutell, Bowersock, Bradley, Brandegee, Brick, Brown (Pa.), Brown (Wis.), Brownlow, Buckman, Burke, Burleigh, Butler (Pa.), Calderhead, Campbell, Capron, Cassel, Conner, Cooper (Pa.), Cousins, Cromer, Crumpacker, Currier, Curtis, Cushman, Dalzell, Daniels, Davis (Minn.), Dixon, Draper, Dresser, Dunwell, Evans, Foss, Foster (Vt.), Fowler, Fuller, Gaines (W. Va.), Gardner (Mich.), Gardner, (N. J.), Gillet (N. Y.), Gillett (Cal.), Gillett (Mass.), Goebel, Graff, Greene, Grosvenor, Hamilton, Haskins, Hedge, Henry (Conn.), Hepburn, Hildebrant, Hill (Conn.), Hinshaw, Hogg, Holliday, Howell (N. J.), Huff, Humphrey (Wash.), Jackson (Md.), Jackson (Ohio), Kennedy, Ketcham, Knapp, Knopf, Knowland, Kyle, Lacey, Lafean, Landis (Chas. B.), Landis (Frederick), Lawrence, Littlefield, Longworth, Lorimer, Loudenslager, Lovering, McCall, McCleary (Minn.), McCreary (Pa.), McLachlan, McMorran, Mahon, Marsh, Marshall, Martin, Miller, Minor, Mudd, Needham, Nevin, Norris, Overstreet, Parker, Patterson (Pa.), Payne, Porter, Reeder, Rodenberg, Scott, Shiras, Sibley, Slemp, Smith (Ill.), Smith (Samuel W.), Smith (Wm. Alden), Smith (N. Y.), Smith (Pa.), Snapp, Southard, Southwick, Sterling, Stevens (Minn.), Sulloway, Tawney, Thomas (Iowa), Thomas (Ohio), Van Voorhis, Volstead, Warner, Warnock, Watson, Webber, Weems, Wood, Woodyard, and Young.

Answered "present," 6—Adams, Pa., Darragh, Dovener, Hughes, W. Va., Kehoe, Olmsted.

Not voting, 78—Alexander, Badger, Bankhead, Benny, Bowie, Brooks, Brundidge, Burgess, Burkett, Burnett, Burton, Butler, Mo., Castor, Connell, Cooper, Tex., Crowley, Davidson, Deemer, Douglas, Dwight, Emerich, Esch, Flack, Fordney, French, Garber, Gardner, Mass., Gilbert, Griffith, Haugen, Hemenway, Hermann, Hitt, Howell, Utah, Hull, Hunter, Keliher, Legare, Lilley, Lind, Littauer, Loud, McCarthy, McDermott, Meyer, La., Miers, Ind., Mondell, Moon, Pa., Morgan, Morrell, Otis, Pearre, Powers, Me., Powers, Mass., Prince, Rainey, Reid, Rider, Robertson, La., Ruppert, Scarborough, Sherman, Shull, Southall, Spalding, Stanley, Sullivan, N. Y., Tate, Townsend, Underwood, Vreeland, Wachter, Wadsworth, Wiley, N. J., Williamson, Wilson, Ill., Wilson, N. Y., Wright.

The result of the vote was announced as above recorded.

So the articles were agreed to

The Clerk announced the following additional pairs:

For the day: Mr. Dovener with Mr. Bankhead; Mr. Hitt with Mr. Kehoe; Mr. Lilley with Mr. Bowie; Mr. Hull with Mr. Lind; Mr. Wiley of New Jersey with Mr. Southall; Mr. Prince with Mr. Garber; Mr. Williamson with Mr. Crowley.

For the vote: Mr. Mondell with Mr. Rainey; Mr. Darragh with Mr. Townsend; Mr. Loud with Mr. Rider.

Mr. PALMER. Mr. Speaker, I ask for a separate vote on articles 6 and 7. Those are the residence articles.

The SPEAKER The gentleman from Pennsylvania asks for a separate vote on articles 6 and 7

Mr. LITTLEFIELD. On that, Mr. Speaker, I call for the yeas and nays

The yeas and nays were ordered.

Mr. PALMER. Let the Clerk read the articles, so the House may understand them.

Mr. WILEY of Alabama Mr. Speaker, I ask for a reading of the articles

The SPEAKER The gentleman from Alabama asks for a reading of the articles Without objection, they will be reported. [After a pause.] The Chair hears no objection.

The Clerk read as follows:

ART. 6. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district



of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress approved the 23d of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine and contiguous territory were transferred to the southern district of Florida; whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida and to comply with the five hundred and fifty-first section of the Revised Statutes of the United States, which provides that—

“A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.”

Nevertheless the said Charles Swayne, judge as aforesaid, did not acquire a residence and did not, within the intent and meaning of said act, reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of October, A. D. 1900, a period of about six years.

Wherefore the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

ART. 7. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress of the United States approved the 23d day of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine, with the contiguous territory, was transferred to the southern district of Florida, whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida, as defined by said act of Congress, and to comply with section 551 of the Revised Statutes of the United States, which provides that—

“A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.”

Nevertheless, the said Charles Swayne, judge as aforesaid, totally disregarding his duty as aforesaid, did not acquire a residence, and within the intent and meaning of said act did not reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of January, A. D. 1903, a period of about nine years.

Wherefore the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law and was and is guilty of a high misdemeanor in office.

The question was taken; and there were—yeas, 159, nays 136, answered “present” 6, not voting 83, as follows:

Yeas, 159.—Adamson, Aiken, Baker, Bartlett, Bassett, Beall (Tex.), Bede, Bell (Cal.), Benton, Bishop, Bowers, Brantley, Breazeale, Broussard, Burleson, Byrd, Caldwell, Candler, Cassingham, Clark, Clayton, Cochran (Mo.), Cockran (N. Y.), Cowherd, Croft, Darragh, Davis (Fla.), Dayton, De Armond, Denny, Dickerman, Dinsmore, Dougherty, Driscoll, Field, Finley, Fitzgerald, Fitzpatrick, Flood, Foster (Ill.), Gaines (Tenn.), Garner, Gibson, Gillespie, Glass, Goldfogle, Gooch, Goulden, Granger, Gregg, Griggs, Gudger, Hamlin, Hardwick, Harrison, Hay, Hearst, Heflin, Henry (Tex.), Hill (Miss.), Hitchcock, Hopkins, Houston, Howard, Hughes (N. J.), Humphreys (Miss.), Hunt, James, Jenkins, Johnson, Jones (Va.), Jones (Wash.), Kitchin (Claude), Kitchin (Wm. W.), Kline, Kluttz, Lamar (Fla.), Lamar (Mo.), Lamb, Lester, Lever, Lewis, Lindsay, Little, Livernash, Livingston, Lloyd, Lucking, McAndrews, McCreary (Pa.), McLain, McNary, Macon, Maddox, Mann, Maynard, Moon (Tenn.), Olmsted, Otjen, Padgett, Page, Palmer, Patterson (N. C.), Patterson (Tenn.), Perkins, Pierce, Pinckney, Pou, Pujo, Rainey, Randell (Tex.), Ransdell (La.), Reid, Rhea, Richardson (Ala.), Rixey, Robb, Roberts, Robinson (Ark.), Robinson (Ind.), Rucker, Russell, Ryan, Scudder, Shackelford, Sheppard, Sherley, Shoher, Sims, Slayden, Small, Smith (Iowa), Smith (Ky.), Smith (Tex.), Snook, Sparkman, Sperry, Spight, Steenerson, Stephens (Tex.), Sullivan (Mass.), Sulzer, Swanson, Taylor, Thayer, Thomas (N. C.), Tirrell, Trimble, Vandiver, Van Duzer, Wade, Wallace, Wanger, Webb, Weisse, Wiley (Ala.), Williams (Ill.), Williams (Miss.), Wynn.



Nays, 136.—Acheson, Adams (Wis.), Allen, Bartholdt, Bates, Beidler, Bingham, Birdsall, Bonyng, Boutell, Bowersock, Bradley, Brandegee, Brick, Brown (Wis.), Brownlow, Buckman, Burke, Burleigh, Butler (Pa.), Calderhead, Campbell, Capron, Cassel, Conner, Cooper (Pa.), Cousins, Cromer, Crumpacker, Currier, Curtis, Cushman, Dalzell, Daniels, Davidson, Davis (Minn.), Dixon, Draper, Dresser, Dunwell, Evans, Foss, Foster (Vt.), Fowler, Fuller, Gaines (W. Va.), Gardner (Mich.), Gardner (N. J.), Gillet (N. Y.), Gillett (Cal.), Gillett (Mass.), Goebel, Graff, Greene, Grosvenor, Hamilton, Haskins, Hedge, Henry (Conn.), Hepburn, Hildebrant, Hill (Conn.), Hinshaw, Hogg, Holliday, Howell (N. J.), Howell (Utah), Huff, Jackson (Md.), Jackson (Ohio), Kennedy, Ketcham, Kinkaid, Knapp, Knopf, Knowland, Kyle, Lacey, Lafean, Landis (Frederick), Lawrence, Littlefield, Longworth, Lorimer, Loudenslager, Lovering, McCall, McCarthv, McCleary (Minn.), McLachlan, McMorran, Mahon, Marsh, Marshall, Martin, Miller, Minor, Mondell, Morgan, Mudd, Murdock, Needham, Nevin, Norris, Overstreet, Parker, Patterson (Pa.), Payne, Porter, Reeder, Shiras, Sibley, Smith (Samuel W.), Smith (Wm. Alden), Smith (N. Y.), Smith (Pa.), Snapp, Southard, Southwick, Stafford, Stevens (Minn.), Sulloway, Tawney, Thomas (Iowa), Thomas (Ohio), Van Voorhis, Volstead, Vreeland, Warner, Warnock, Watson, Webber, Weems, Wood, Woodyard, Young.

Answered "present," 6.—Babcock, Davey (La.), Dovener, Haugen, Kehoe, Zenor.

Not voting, 83.—Adams (Pa.), Alexander, Ames, Badger, Bankhead, Benny, Bowie, Brooks, Brown (Pa.), Brundidge, Burgess, Burkett, Burnett, Burton, Butler (Mo.), Castor, Connell, Cooper (Tex.), Cooper (Wis.), Crowley, Deemer, Douglas, Dwight, Emerich, Esch, Flack, Fordney, French, Garber, Gardner (Mass.), Gilbert, Griffith, Hemenway, Hermann, Hitt, Hughes (W. Va.), Hull, Humphrey (Wash.), Hunter, Keliher, Landis (Chas. B.), Legare, Lilley, Lind, Littauer, Loud, McDermott, Meyer (La.), Miers (Ind.), Moon (Pa.), Morrell, Otis, Pearre, Powers (Me.), Powers (Mass.), Prince, Richardson (Tenn.), Rider, Robertson (La.), Rodenberg, Rupport, Scarborough, Scott, Sherman, Shull, Slomp, Smith (Ill.), Southall, Spalding, Stanley, Sterling, Sullivan (N. Y.), Talbott, Tate, Townsend, Underwood, Wachter, Wadsworth, Wiley (N. J.), Williamson, Wilson (Ill.), Wilson (N. Y.), Wright.

So articles 6 and 7 were adopted.

The Clerk announced the following additional pairs:

For the balance of the day: Mr. Babcock with Mr. Richardson of Tennessee; Mr. Cooper of Wisconsin with Mr. Brown of Pennsylvania; Mr. Haugen with Mr. Humphrey of Washington; Mr. Charles B. Landis with Mr. Zenor; Mr. Rodenberg with Mr. Davey of Louisiana; Mr. Spalding with Mr. Sterling; Mr. Townsend with Mr. Talbott.

The result of the vote was announced as above recorded.

On motion of Mr. Palmer, a motion to reconsider the last vote was laid on the table.

On motion of Mr. Palmer, a motion to reconsider the votes by which articles 1, 2, 3, 4, and 5 were agreed to was laid on the table.

Mr. PALMER. I ask that a vote be taken on articles 8, 9, 10, and 11. Those are the articles covering the contempt cases of Davis and Belden.

Articles 8, 9, 10, and 11 were agreed to.

On motion of Mr. Palmer, a motion to reconsider the last vote was laid on the table.

Mr. PALMER. I move that the House do now adopt article 12. That is the O'Neal contempt article.

The motion was agreed to.

On motion of Mr. Palmer, a motion to reconsider the last vote was laid on the table.

Mr. PALMER. Mr. Speaker, I offer the resolution which I send to the Clerk's desk.

The SPEAKER pro tempore (Mr. Dalzell). The gentleman from Pennsylvania offers a resolution, which will be reported by the Clerk.

The Clerk read as follows:

[H. Res. 450.]

*Resolved*, That seven managers be appointed by the Speaker of this House to conduct the impeachment against Charles Swayne, judge of the district court of the United States in and for the northern district of Florida.

The resolution was agreed to.

On motion of Mr. Palmer, a motion to reconsider the last vote was laid on the table.

Mr. PALMER. Mr. Speaker, I offer a resolution, which I send to the Clerk's desk.

The SPEAKER pro tempore. The gentleman from Pennsylvania offers a resolution, which will be reported by the Clerk.

The Clerk read as follows:

[H. Res. 451.]

*Resolved*, That the articles agreed to by this House to be exhibited in the name of themselves and of all the people of the United States against Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, in maintenance of their impeachment against him of high crimes and misdemeanors in office be carried to the Senate by the managers appointed to conduct said impeachment.

The resolution was agreed to.

On motion of Mr. Palmer, a motion to reconsider the last vote was laid on the table.

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### HOUSE OF REPRESENTATIVES, *January 21, 1905.*

[Congressional Record, volume 39, part 2, page 1202.]

#### MANAGERS OF THE IMPEACHMENT OF JUDGE CHARLES SWAYNE.

The SPEAKER. The Chair announces the following managers in the impeachment case, pursuant to a resolution of the House.

The Clerk read as follows:

Mr. Palmer, Mr. Powers of Massachusetts, Mr. Olmsted, Mr. Perkins, Mr. Clayton, Mr. De Armond, and Mr. Smith of Kentucky.

Mr. PALMER. I offer the resolution that I send to the Clerk's desk, Mr. Speaker.

The Clerk read as follows:

[H. Res. 464.]

*Resolved*, That a message be sent to the Senate to inform them that this House has appointed Mr. Palmer, Mr. Powers, of Massachusetts, Mr. Olmsted, Mr. Perkins, Mr. Clayton, Mr. De Armond, and Mr. Smith of Kentucky managers to conduct the impeachment against Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, and have directed the said managers to carry to the Senate the articles agreed upon by this House to be exhibited for maintenance of their impeachment against said Charles Swayne, and that the Clerk of the House do go with said message.

The question was taken, and the resolution was agreed to.

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### SENATE, *January 21, 1905.*

[Congressional Record, volume 39, part 2, page 1176.]

A message from the House of Representatives, by Mr. W. J. Browning, announced that the House had agreed to the following resolution:

IN THE HOUSE OF REPRESENTATIVES,  
*January 21, 1905.*

[H. Res. 464.]

*Resolved*, That a message be sent to the Senate to inform them that this House have appointed Mr. Palmer, Mr. Powers, of Massachusetts, Mr. Olmsted, Mr. Perkins,

Mr. Clayton, Mr. De Armond, and Mr. Smith, of Kentucky, managers to conduct the impeachment against Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, and have directed the said managers to carry to the Senate the articles agreed upon by this House to be exhibited in maintenance of their impeachment against said Charles Swayne, and that the Clerk of the House do go with said message.

Mr. PLATT of Connecticut. Mr. President, I ask permission at this time to submit an order, and I ask that it be acted upon.

The PRESIDENT pro tempore. The Senator from Connecticut presents an order, and asks for its present consideration. It will be read.

The order was read, and agreed to, as follows:

*Ordered*, That the Secretary inform the House of Representatives that the Senate is ready to receive the managers appointed by the House for the purpose of exhibiting articles of impeachment against Charles Swayne, judge of the district court of the United States for the northern district of Florida, agreeably to the notice communicated to the Senate.

Mr. TELLER. Mr. President, if I may be allowed to say a word, I should like to say it now, for I believe possibly it may expedite business in the future.

We have just received from the House of Representatives notice that we are to enter upon an impeachment case. I am utterly unacquainted with the character of the charges made against this judge, for I have read only one of them, I think. I expect to sit here as a judge, and I did not care to prejudice my mind in favor of or against the judge by reading the matter when it was pending in another place.

It is our duty now, under the rules of the Senate, to proceed immediately with this impeachment. I have heard it rumored around the Senate Chamber that it was possible we might postpone it until the next session. There can be no support found for that, I think, either in reason or in precedent. We owe it to this judge to give him a trial, in order that if he is not guilty he may be acquitted. We owe it to the people of the district over which he presides to give him a trial, in order that if he is guilty he may be removed from office.

Now, the rules of the Senate require us to proceed, and to proceed at once. Mr. President, for one I am going to insist that we shall take up this impeachment case and proceed with it. We have a bill pending here that I do not suppose anyone on this floor expects to become a law. There is little interest taken in it. During this week, when it has been ably discussed here, a good deal of the time there have not been more than six Senators on the other side of the Chamber and frequently not many more than that number on this side. We have discussed it for hours here without a quorum in the Senate. No one has attempted to delay the bill unnecessarily or unreasonably; and here we are confronted with a duty; and I think the dignity and decency of the Senate require us to take up this case and dispose of it at the earliest day possible.

For one, I do not intend that a measure of that kind shall interfere with this hearing, if I can prevent it. We shall be able probably to pass the appropriation bills while we are conducting the case and in the few days that we will have to take in getting ready. We must notify the party who is impeached that he may come here and put in his defense. I suppose he may reasonably ask for a few days to

get ready to make that defense. He will probably appear here by lawyers, because the impeaching party will appear here by a commission from the House. I wish to give this note of warning to the Senator who has the statehood bill in charge. I say that measure is of very little consequence compared with the disposition of this case.

For myself, Mr. President, I intend to submit my objections to the admission of Arizona and New Mexico as one State. I expect to submit some objection to the immediate annexation of the Indian Territory to Oklahoma. I should be delighted to vote for the admission of Oklahoma, and I should be delighted to vote for the admission of New Mexico and Arizona as separate States. If the dominant party in the Senate are willing to admit Oklahoma, the Government reserving the right to put on the Indian Territory whenever we think it ought to go on, and are willing to admit New Mexico and Arizona as separate States, I should be glad to join in that effort. I should like to vote for the admission of New Mexico. I think I have voted for its admission at least ten or twelve times in the last 28 years. I think it ought to have been admitted fully 50 years ago.

Mr. PLATT of Connecticut. Mr. President, I do not know that this is exactly the proper time to discuss the proposed impeachment case. Certainly I think there will be a future time when it will perhaps be more proper to discuss it. In view of what the Senator from Colorado said, I thought I would not let the moment pass without assuring him that his apprehensions that the case might be continued to another session of the Senate are without foundation. All the expression I have heard from Senators is to the effect that we ought to proceed with it and conclude it.

Mr. TELLER. I was not alarmed about its being continued, for I know that can not be done by law, but that we might decline to proceed to try the case. We would disgrace ourselves before the world if we declined to proceed with it.

Mr. PLATT of Connecticut. I do not think the Senator need have any apprehension on that point.

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### HOUSE OF REPRESENTATIVES, *January 23, 1905.*

[Congressional Record, volume 39, part 2, page 1246.]

Mr. Loudenslager and Mr. Palmer rose.

The SPEAKER. For what purpose does the gentleman from Pennsylvania rise?

Mr. PALMER. Mr. Speaker, I rise to offer a privileged resolution.

The SPEAKER. The gentleman from Pennsylvania rises to offer a privileged resolution, which the Clerk will report.

The Clerk read as follows:

*Resolved*, That the managers on the part of the House in the matter of the impeachment of Charles Swayne, district judge of the United States in and for the northern district of Florida, be, and they are hereby, authorized to employ a clerk, stenographer, and messenger, and to incur such expense as may be necessary in the preparation and conduct of the case, to be paid out of the contingent fund of the House on vouchers approved by the managers, and the managers have power to send for persons and papers.

The SPEAKER. The question is on agreeing to the resolution.

The question was taken, and the resolution was agreed to.

SENATE, *January 23, 1905.*

[Congressional Record, volume 39, part 2, page 1243.]

Mr. PLATT of Connecticut. Without displacing the unfinished business, I ask unanimous consent for the reference of the resolution which I send to the Chair.

The resolution was read, and referred to the Committee to Audit and Control the Contingent Expenses of the Senate, as follows:

*Resolved*, That the expenses incident to the impeachment trial of Charles Swayne, judge for the northern district of Florida, be paid from the contingent fund of the Senate upon vouchers approved by the Sergeant at Arms.

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SENATE, *January 24, 1905.*

[Congressional Record, vol. 39, pt. 2, p. 1281-1283.]

At 12 o'clock and 30 minutes p. m. the managers of the impeachment, on the part of the House of Representatives, of Judge Charles Swayne appeared below the bar of the Senate, and the Assistant Sergeant at Arms (Alonzo H. Stewart) announced their presence as follows:

I have the honor to announce the managers on the part of the House of Representatives, to conduct the impeachment against Charles Swayne, judge of the United States district court for the northern district of Florida.

The PRESIDENT pro tempore. The managers on the part of the House will be received, and the Sergeant at Arms will assign them their seats.

The managers were thereupon escorted by the Assistant Sergeant at Arms of the Senate to the seats assigned to them in the area in front of the Chair.

The PRESIDENT pro tempore. The Sergeant at Arms will make proclamation.

The Sergeant at Arms (D. M. Ransdell) made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons will keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Charles Swayne, judge of the district court of the United States for the northern district of Florida

Mr. Manager PALMER. Mr. President.

The PRESIDENT pro tempore. Mr. Manager.

Mr. Manager PALMER. The managers on the part of the House of Representatives are ready to exhibit articles of impeachment against Charles Swayne, district judge of the United States in and for the northern district of Florida, as directed by the House, in the words and figures following:

ARTICLE 1. That the said Charles Swayne, at Waco, in the State of Texas, on the 20th day of April, 1897, being then and there a United States district judge in and for the northern district of Florida, did then and there, as said judge, make and present to R. M. Love, then and there being the United States marshal in and for the northern district of Texas, a false claim against the Government of the United States in the sum of \$230, then and there knowing said claim to be false, and for the purpose of obtaining payment of said false claim did



then and there as said judge, make and use a certain false certificate then and there knowing said certificate to be false, said certificate being in the words and figures following:

UNITED STATES OF AMERICA, *Northern District of Texas*, ss:

I, Charles Swayne, district judge of the United States for the northern district of Florida, do hereby certify that I was directed to and held court at the city of Waco, in the northern district of Texas, 23 days, commencing on the 20th day of April, 1897; also, that the time engaged in holding said court, and in going to and returning from the same, was 23 days, and that my reasonable expenses for travel and attendance amounted to the sum of two hundred and thirty dollars and ——— cents, which sum is justly due me for such attendance and travel.

CHAS. SWAYNE, *Judge*.

WACO, *May 15, 1897*.

Received of R. M. Love, United States marshal for the northern district of Texas, the sum of two hundred and thirty dollars and no cents, in full payment of the above account.

\$230.

CHAS. SWAYNE.

when in truth and in fact, as the said Charles Swayne then and there well knew, there was then and there justly due the said Swayne from the Government of the United States and from said United States marshal a far less sum, whereby he has been guilty of a high crime and misdemeanor in his said office.

ART. 2. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office as judge, as aforesaid, the said Charles Swayne was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed \$10 per diem, to be paid upon his certificate by the United States marshal for the district in which the court was held, and was forbidden by law to receive compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were \$10 per diem while holding court at Tyler, Tex., 24 days commencing December 3, 1900, and 7 days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of John Grant, the United States marshal for the eastern district of Texas, the sum of \$310, when the reasonable expenses incurred and paid by the said Charles Swayne for travel and attendance did not amount to the sum of \$10 per diem.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, the crime of obtaining money from the United States by a false pretense and of a high misdemeanor in office.

ART. 3. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida entered upon the duties of his office, and while in the exercise of his office of judge as aforesaid was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed \$10 per diem, to be paid upon his certificate by the United States marshal of the district in which the court was held, and was forbidden by law to receive any compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel in going to and coming from and attendance were \$10 per diem while holding court at Tyler, Tex., 35 days from January 12, 1903, and 6 days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of A. J. Houston, the United States marshal for the eastern district of Texas, the sum of \$410, when the reasonable expenses of the said Charles Swayne incurred and paid by him during said period were much less than said sum.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

ART. 4. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida entered upon the duties of his office, and while in the exercise of his office of judge aforesaid, heretofore, to wit, A. D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa & Key West Railroad Co., for the purpose of transporting himself, his family, and friends from Guyencourt, in the State of Delaware, to Jacksonville, Fla.,

the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors.

The said car was supplied with provisions by the said receiver, which were consumed by said Swayne and his friends, and was provided with a conductor or porter at the cost and expense of said railroad company, and with transportation over connecting lines. The expenses of the trip were paid by the said receiver out of the funds of the said Jacksonville, Tampa & Key West Railroad Co., and the said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditure as a part of the necessary expenses of operating said road. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner, and under a claim of right, for the reason that the same was in the hands of a receiver appointed by him.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 5. That the said Charles Swayne was duly appointed, commissioned, and confirmed as judge of the United States in and for the northern district of Florida, and entered upon the duties of said office, and while in the exercise of his office of judge as aforesaid, heretofore, to wit, A. D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa & Key West Railroad Co., for the purpose of transporting himself, his family, and friends from Jacksonville, Fla., to California, said railroad company being at the time in the possession of a receiver appointed by the said Charles Swayne, judge as aforesaid, on the petition of creditors.

The car was supplied with some provisions by the said receiver, which were consumed by the said Swayne and his friends, and it was provided with a porter at the cost and expense of the railroad company, and also with transportation over connecting lines. The wages of said porter and the cost of said provisions were paid by the said receiver out of the funds of the Jacksonville, Tampa & Key West Railroad Co., and the said Charles Swayne, acting as judge as aforesaid, allowed the credits claimed by the said receiver for and on account of the said expenditures as a part of the necessary expenses of operating the said railroad. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner under a claim of right, alleging that the same was in the hands of a receiver appointed by him and he, therefore, had a right to use the same.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of high misdemeanor in office.

ART. 6. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress approved the 23d of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine and contiguous territory were transferred to the southern district of Florida; whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida and to comply with the five hundred and fifty-first section of the Revised Statutes of the United States, which provides that—

“A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.”

Nevertheless the said Charles Swayne, judge as aforesaid, did not acquire a residence, and did not, within the intent and meaning of said act, reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of October, A. D. 1900, a period of about six years.

Wherefore the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

ART. 7. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress of the United States approved the 23d day of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine, with the contiguous territory, was

transferred to the southern district of Florida, whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida, as defined by said act of Congress, and to comply with section 551 of the Revised Statutes of the United States, which provides that—

“A district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.”

Nevertheless, the said Charles Swayne, judge as aforesaid, totally disregarding his duty as aforesaid, did not acquire a residence, and within the intent and meaning of said act did not reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of January, A. D. 1903, a period of about nine years.

Wherefore, the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

ART. 8. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge, as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days E. T. Davis, an attorney and counsellor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 9. That the said Charles Swayne having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 10. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore, the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power, and of a high misdemeanor in office.

ART. 11. That the said Charles Swayne having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a circuit judge of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 12. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office

of judge, heretofore, to wit, on the 9th day of December, A. D. 1902, at Pensacola, in the county of Escambia, in the State of Florida, did unlawfully and knowingly adjudge guilty of contempt, and did commit to prison for the period of 60 days, one W. C. O'Neal, for an alleged contempt of the district court of the United States for the northern district of Florida.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, as aforesaid, and was and is guilty of an abuse of judicial power, and of a high misdemeanor in office.

And the House of Representatives by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles of accusation or impeachment against the said Charles Swayne, judge of the United States court for the northern district of Florida, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same and every part thereof, and to all and every other article or accusation or impeachment which shall be exhibited by them as the case shall require, do demand that the said Charles Swayne may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

J. G. CANNON,  
*Speaker of the House of Representatives.*

Attest:

A. McDOWELL,  
*Clerk.*

The articles of impeachment were handed to the Secretary of the Senate.

The PRESIDENT pro tempore. The Senate will take proper order in the matter of the impeachment of Judge Swayne, and communicate to the House of Representatives its action.

The managers thereupon withdrew from the Chamber.

Mr. PLATT of Connecticut. I submit the order which I send to the desk, and ask that it be now considered.

The PRESIDENT pro tempore. The order will be read.

The order was read, considered by unanimous consent, and agreed to, as follows:

*Ordered*, That the articles of impeachment presented this day by the House of Representatives be printed for the use of the Senate.

Mr. PLATT of Connecticut. I submit the order which I send to the desk, for which I ask present consideration.

The PRESIDENT pro tempore. The order submitted by the Senator from Connecticut will be read.

The order was read, considered by unanimous consent, and agreed to, as follows:

*Ordered*, That at 2 o'clock this afternoon the Senate will proceed to the consideration of the articles of impeachment of Charles Swayne, judge of the United States district court for the northern district of Florida, presented this day.

Mr. FAIRBANKS. I ask for the present consideration of the order which I send to the desk.

The PRESIDENT pro tempore. The order will be read.

The order was read, considered by unanimous consent, and agreed to, as follows:

*Ordered*, That a committee of two Senators be appointed by the Chair to wait upon the Chief Justice of the United States and invite him to attend in the Senate Chamber at 2 o'clock this day, to administer to Senators the oath required by the Constitution, in the matter of the impeachment of Charles Swayne, or in case of his inability to attend, any one of the Associate Justices.

The PRESIDENT pro tempore. In pursuance of the order just adopted the Chair appoints as the committee to wait on the Chief Justice the Senator from Indiana [Mr. Fairbanks] and the Senator from Georgia [Mr. Bacon].



HOUSE OF REPRESENTATIVES, *January 24, 1905.*

[Congressional Record, volume 39, part 2, page 1310.]

Mr. PALMER. Mr. Speaker, the managers of impeachment beg leave to report to the House that the articles of impeachment prepared by the House of Representatives against Charles Swayne, district judge of the United States in and for the northern district of Florida, have been exhibited and read to the Senate, and the Presiding Officer of that body stated to the managers that the Senate would take order in the premises, due notice of which would be given to the House of Representatives.

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SENATE, *January 24, 1905.*

[Congressional Record, volume 39, part 2, pages 1289, 1290.]

Mr. PLATT of Connecticut (at 2 o'clock p. m.). It may be a mere matter of formality, but Rule III of the Rules of Procedure and Practice in the Senate when sitting on impeachment trials provides that the Presiding Officer shall administer the oath therein provided to the members of the Senate when sitting in impeachment trials. I ask unanimous consent that the rule be suspended.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and the rule is suspended.

The presence of the Chief Justice of the United States, Hon. Melville W. Fuller, was announced by the Assistant Sergeant-at-Arms.

The Chief Justice entered the Senate Chamber, escorted by Mr. Fairbanks and Mr. Bacon, the committee appointed for the purpose, and was conducted by them to a seat by the side of the President pro tempore.

Mr. FAIRBANKS. Mr. President, the committee appointed by the Senate to wait upon the Chief Justice of the Supreme Court of the United States and request him to administer to Senators the oath required by the Constitution in the matter of the impeachment of Judge Charles Swayne report that they have discharged that duty. The Chief Justice of the Supreme Court, complying with the request of the Senate, is now present in the Senate and ready to administer the oath required to be administered to the members of the Senate sitting in the trial of impeachments.

The Chief Justice administered the oath to the President pro tempore as follows:

You do solemnly swear that in all things appertaining to the trial of the impeachment of Charles Swayne, judge of the district court of the United States for the northern district of Florida, now pending, you will do impartial justice according to the Constitution and laws. So help you God.

The PRESIDENT pro tempore. The Senator from Connecticut will please present himself as Presiding Officer of the Senate while in court and take the necessary oath.

Mr. Platt of Connecticut advanced to the Vice President's desk, and the oath was administered to him by the Chief Justice.



The PRESIDENT pro tempore. The Secretary will call the roll, and as their names are called Senators will present themselves at the desk in groups of 10, and the oath will be administered to them.

The Secretary called the names of Messrs. Aldrich, Alger, Allee, Allison, Ankeny, Bacon, Bailey, Ball, Bard, and Bate, and these Senators, with the exception of Mr. Aldrich, advanced to the area in front of the Vice President's desk, and the oath was administered to them by the Chief Justice.

The Secretary called the names of Messrs. Berry, Beveridge, Blackburn, Burnham, Burrows, Burton, Carmack, Clapp, Clark of Montana, and Clark of Wyoming, and these Senators, with the exception of Mr. Blackburn, Mr. Burton, and Mr. Clark of Wyoming, appeared, and the oath was administered to them by the Chief Justice.

The Secretary called the names of Messrs. Clarke of Arkansas, Clay, Cockrell, Crane, Culberson, Cullom, Daniel, Depew, Dick, and Dietrich, and these Senators, with the exception of Mr. Culberson, Mr. Daniel, and Mr. Depew, appeared, and the oath was administered to them by the Chief Justice.

The Secretary called the names of Messrs. Dillingham, Dolliver, Dryden, Dubois, Elkins, Fairbanks, Foraker, Foster of Louisiana, Foster of Washington, and Fulton, and these Senators, with the exception of Mr. Dryden and Mr. Foster of Washington, appeared, and the oath was administered to them by the Chief Justice.

The Secretary called the names of Messrs. Gallinger, Gamble, Gibson, Gorman, Hale, Hansbrough, Hawley, Heyburn, Hopkins, and Kean, and these Senators, with the exception of Mr. Hawley, appeared, and the oath was administered to them by the Chief Justice.

Mr. PLATT of Connecticut. I desire to announce that my colleague [Mr. Hawley] is detained at home by illness.

The Secretary called the names of Messrs. Kearns, Kittredge, Knox, Latimer, Lodge, Long, McComas, McCreary, McCumber, and McEnery, and these Senators, with the exception of Mr. Knox, appeared, and the oath was administered to them by the Chief Justice.

Mr. PENROSE. I desire to announce that my colleague [Mr. Knox] is absent from the city.

The Secretary called the names of Messrs. McLaurin, Mallory, Martin, Millard, Mitchell, Money, Morgan, Nelson, Newlands, and Overman, and these Senators, with the exception of Mr. McLaurin and Mr. Mitchell, appeared, and the oath was administered to them by the Chief Justice.

The Secretary called the names of Messrs. Patterson, Penrose, Perkins, Pettus, Platt of New York, Proctor, Quarles, Scott, Simmons, and Smoot, and these Senators, with the exception of Mr. Quarles and Mr. Scott, appeared, and the oath was administered to them by the Chief Justice.

The Secretary called the names of Messrs. Spooner, Stewart, Stone, Taliaferro, Teller, Tillman, Warren, and Wetmore, and these Senators, with the exception of Mr. Tillman, appeared, and the oath was administered to them by the Chief Justice.

Mr. LATIMER. My colleague [Mr. Tillman] is prevented from attending the session of the Senate on account of sickness.

Mr. Daniel appeared, and the oath was administered to him by the Chief Justice.

Mr. Scott appeared, and the affirmation was administered to him by the Chief Justice.

Mr. KEAN. My colleague [Mr. Dryden] is necessarily absent from the Senate.

Mr. PLATT of New York. I beg to announce that my colleague [Mr. Depew] is absent from the city.

The PRESIDENT pro tempore. The oath has been administered to all Senators who are now present.

Mr. BAILEY. Mr. President, I presume, although the roll was not called, so that Senators could answer to their names, nevertheless the proper officers of the Senate have recorded the Senators who are present and who have taken the oath, and that it will appear that certain Senators have not taken the oath. Among those Senators is my colleague [Mr. Culberson], who is now absent in attendance upon the Legislature of the State of Texas, and I desire that announcement to appear.

The PRESIDENT pro tempore. Whenever an absent Senator shall announce his presence, the oath will be administered to him.

Mr. WETMORE. I desire to announce the unavoidable absence of my colleague [Mr. Aldrich].

The Chief Justice withdrew from the Chamber, escorted by Mr. Fairbanks and Mr. Bacon.

Mr. PLATT of Connecticut. Mr. President, in order that the record may be complete, I ask that the names of those Senators who have not appeared and taken the oath may be called.

The PRESIDENT pro tempore. The names of Senators who have not taken the oath will now be called.

The Secretary called the names of absent Senators, as follows:

Messrs. Aldrich, Blackburn, Burton, Clark of Wyoming, Culberson, Depew, Dryden, Foster of Washington, Hawley, Knox, McLaurin, Mitchell, Quarles, and Tillman.

The PRESIDENT pro tempore. The Senator from Connecticut [Mr. Platt] will now please take the chair.

Mr. Platt of Connecticut thereupon took the chair.

The PRESIDING OFFICER (Mr. Platt of Connecticut). Senators, the Senate is now sitting for the trial of the impeachment of Charles Swayne, judge of the United States district court in and for the northern district of Florida.

Mr. FAIRBANKS. Mr. President, I offer the order which I send to the desk, and ask for its present consideration.

The PRESIDING OFFICER. The order submitted by the Senator from Indiana will be read.

The order was read, as follows:

*Ordered*, That the Secretary notify the House of Representatives that the Senate is now organized for the trial of articles of impeachment against Charles Swayne, judge of the United States district court for the northern district of Florida, and is ready to receive the managers on the part of the House at its bar.

The PRESIDING OFFICER. If there be no objection, the order will be now considered. The question is on its adoption. [Putting the question.] The order is agreed to. The Secretary will so inform the House of Representatives.

Senators, the Chair is sure it will not be out of place for him to speak of the absolute importance that all Senators who have been sworn shall be in their seats during the entire proceedings of the impeachment trial. Even committee work ought to be suspended during

the hours when the impeachment trial shall be proceeding. The Chair thought it proper to speak of this at the present time and to express the hope that all Senators may be present during the proceedings.

At 2 o'clock and 27 minutes p. m. the managers of the impeachment on the part of the House of Representatives appeared at the bar and their presence was announced by the Sergeant at Arms.

The PRESIDING OFFICER. The Sergeant at Arms will conduct the managers to the seats provided for them within the bar of the Senate.

The managers were conducted to the seats assigned them within the space in front of the Secretary's desk.

The PRESIDING OFFICER. Gentlemen managers, the Senate is now organized for the trial of the impeachment of Charles Swayne, United States judge in and for the northern district of Florida.

Mr. Manager Palmer rose and said: Mr. President, we are instructed by the House of Representatives, as its managers, to demand that the Senate shall issue process against Charles Swayne, district judge of the United States in and for the northern district of Florida, that he answer at the bar of the Senate the articles of impeachment heretofore exhibited by the House of Representatives through its managers.

Mr. FAIRBANKS. Mr. President, I propose the order which I send to the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The order will be read.

The order was read, considered by unanimous consent, and agreed to, as follows:

*Ordered*, That a summons be issued, as required by the rules of procedure and practice in the Senate when sitting for the trial of impeachment of Charles Swayne, returnable on Friday, the 27th day of the present month, at 1 o'clock in the afternoon.

Mr. FAIRBANKS. Mr. President, I present another order, which I send to the desk, and for which I ask immediate consideration.

The order was read, considered by unanimous consent, and agreed to, as follows:

*Ordered*, That the Senate, sitting for the trial of impeachment of Charles Swayne, adjourn until Friday, the 27 instant, at 1 o'clock in the afternoon.

The PRESIDING OFFICER. The order having been agreed to, the Senate, sitting for the trial of the impeachment, stands adjourned until 1 o'clock on Friday, the 27th instant. The Senate will resume its legislative session.

Mr. Platt of Connecticut thereupon vacated the chair, which was resumed by the President pro tempore.

SENATE, *January 24, 1905.*

[Congressional Record, volume 39, part 2, page 1291.]

#### POWER OF PRESIDING OFFICER IN IMPEACHMENT TRIALS.

Mr. SPOONER. Mr. President, the rules of the Senate governing the sessions of the Senate when it is sitting in the trial of impeachments seems to draw a distinction between the Presiding Officer of the Senate and the Presiding Officer on the trial. Rule V provides:

V. The Presiding Officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by these rules, or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

The forms of summonses and subpoenas are all signed by the Presiding Officer of the Senate. In order to remove all possible question as to who shall sign the mandates of the Senate, including subpoenas, I offer the resolution which I send to the desk, and ask unanimous consent for its present consideration.

The PRESIDENT pro tempore. The resolution will be read.

The Secretary read as follows:

*Resolved*, That the Presiding Officer on the trial of the impeachment of Charles Swayne, judge of the United States in and for the northern district of Florida, be, and is hereby, authorized to sign all orders, mandates, writs, and precepts authorized by the rules of procedure and practice in the Senate when sitting on impeachment trials, and by the Senate.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution? The Chair hears none, and the resolution is before the Senate.

Mr. BACON. Before the resolution is agreed to, I should like to ask the Senator from Wisconsin if it is not a fact that throughout the rules there is some ambiguity, if I may so speak, and would it not be well to make Rule V broad enough, not only to cover the particular function mentioned in that rule, but all other duties which are connected with impeachment trials after the organization of the court, which in the rules generally are delegated to the Presiding Officer, without stating whether he is the Presiding Officer of the Senate or the Presiding Officer of the court?

Mr. SPOONER. Mr. President, the whole matter seems to me to be in the power of the Senate. The Constitution invests each House with the power, without limit, to make its own rules of procedure. Under the Constitution the function of trying impeachment cases devolves upon the Senate, and the provision of the Constitution must be construed as authorizing the Senate to make the rules which it may deem necessary for the proper discharge of all of the duties and functions devolved upon it by the Constitution. The Senate has, I think, within its power and with perfect propriety under the circumstances, appointed a Senator to preside, using the language of the rule, to be "the Presiding Officer on the trial." That clearly vests in him the functions, as I think, of passing upon the admissibility of evidence and upon the various questions which may arise in the course of the trial.

This question is one which must be determined at once, for a summons is to be issued to Judge Swayne to appear, and it is important, of course, that there shall be no doubt that the officer signing the summons has the power to do so.

The rules need revision anyway. In several particulars I think they are a little inconsistent, and in some particulars quite blind.

Mr. BACON. And in others quite uncertain.

Mr. SPOONER. Yes. But there is no time now to enter upon a revision of the rules, so I hope the Senator will allow us by this resolution, which clearly covers it, to meet the particular necessity which now confronts us.

Mr. BACON. Mr. President, I recognize fully the absolute correctness of everything which the Senator from Wisconsin has stated.

Mr. SPOONER. If the Senator will allow me there——

Mr. BACON. If the Senator will pardon me I do not wish that the remarks I have so far made should be misunderstood by others. I do not disagree with him in anything he has said; on the contrary,

as I have stated, I recognize fully the correctness of everything which he has said. My purpose was not to interfere in any manner with what it is proposed to do by his amendment to the rules; but knowing the fact of their ambiguity and uncertainty and conflicting clauses it occurred to me that possibly some general language might be used which would not only cover this particular necessity but which would cover all, so far as to vest within the power of the Presiding Officer on the trial, whom we have selected, all the powers which are exercised after the organization of the court and which are conferred under the rules generally on the Presiding Officer. But if the Senator thinks that the rule originally adopted, by which we conferred certain powers upon the Senator from Connecticut [Mr. Platt] as the Presiding Officer, are sufficient to cover the general features which I have in mind and that it would be better simply to have this specific rule as to this specific function, of course I will not urge the matter.

Mr. SPOONER. It is my impression, Mr. President, that there is no absolute necessity for the adoption of this resolution. I think probably "the Presiding Officer of the Senate" means "the Presiding Officer of the Senate sitting as an impeachment tribunal," but there is a question about it.

Now, if the Senator will turn to Rule VII——

Mr. BACON. I have it before me.

Mr. SPOONER. It provides:

VII. The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer on the trial shall direct all the forms of proceedings while the Senate are sitting for the purpose of trying an impeachment and all forms during the trial not otherwise specially provided for. And the Presiding Officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision, etc.

Ordinarily the Presiding Officer of the Senate would be the Presiding Officer of the trial.

Mr. BACON. If the Senator will pardon me, of course I do not wish to interfere with this particular order, but, as we have the subject before us for the moment, I may say the difficulty is that while Rule VII itself differentiates between the Presiding Officer of the Senate and the Presiding Officer on the trial there are other rules. Rule V, for instance, in which there is no such differentiation, and in which the simple designation "Presiding Officer" is had.

Mr. SPOONER. The resolution I have submitted is applied to Rule V. It clears Rule V or is intended to do so.

Mr. BACON. Rule VII speaks of the Presiding Officer of the Senate and of the Presiding Officer on the trial, whereas Rule V only speaks of the Presiding Officer, without stating which one it is. While under some proper rule of construction it may be legitimate to draw the the conclusion which the Senator does, Rule VII does make that clear. It is very much better, in my opinion, that it should be specified rather than left to a question of construction, but I do not insist upon it at this time. I quite agree with the Senator that the rules should be revised, but this is not the proper time to do it. We can get along with what we have now.

Mr. SPOONER. In this particular matter it must be made absolutely clear that if one is summoned or subpoenaed to appear and



refuses to do so, it is necessary that there shall be no doubt about the power of the officer who sent the process to sign it.

Mr. BACON. The Senator is entirely correct in that.

Mr. SPOONER. I hope the resolution may be passed at this time. The resolution was unanimously agreed to.

HOUSE OF REPRESENTATIVES, *Thursday, January 26, 1905.*

EXPENSES OF IMPEACHMENT TRIAL OF JUDGE CHARLES SWAYNE.

Mr. HEMENWAY. Mr. Speaker, I desire to take from the Speaker's table Senate joint resolution 97, and ask for its immediate consideration.

The SPEAKER. The gentleman from Indiana asks for unanimous consent to take from the Speaker's table the Senate joint resolution which the Clerk will report.

The Clerk read as follows:

JOINT RESOLUTION (S. J. Res. 97) Providing for the payment of the expenses of the Senate in the impeachment trial of Charles Swayne.

*Resolved, etc.,* That there be appropriated from any money in the Treasury not otherwise appropriated the sum of \$40,000, or so much thereof as may be necessary, to defray the expenses of the Senate in the impeachment trial of Charles Swayne.

The SPEAKER. Is there objection?

Mr. HUGHES of West Virginia. I object.

The SPEAKER. The gentleman from West Virginia objects.

Mr. HUGHES of West Virginia. I want to find out why it is necessary for that amount to be appropriated for this purpose. It seems entirely too much.

Mr. HEMENWAY. I think it is too much; but no portion of it will be expended except that which is absolutely necessary; and I did not think it advisable to amend it.

Mr. HUGHES of West Virginia. Mr. Speaker, I withdraw my objection.

The SPEAKER. The gentleman withdraws his objection. Is there further objection? [After a pause.] The Chair hears none.

The joint resolution was ordered to a third reading, read the third time, and passed.

SENATE, *January 27, 1905.*

[Congressional Record, volume 30, part 2, page 1449-1451.]

The PRESIDENT pro tempore. The hour of 1 o'clock, to which the Senate sitting as a court in the impeachment of Judge Charles Swayne adjourned, has arrived. Will the Senator from Connecticut [Mr. Platt] please take the chair?

Mr. Platt of Connecticut thereupon took the chair as Presiding Officer.

The PRESIDING OFFICER. The Sergeant at Arms will make the opening proclamation.

The SERGEANT AT ARMS. Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence on pain of imprisonment while

the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Charles Swayne, judge of the district court of the United States in and for the northern district of Florida.

The PRESIDING OFFICER. The Secretary will now call the names of those Senators who have not been sworn, and such of those Senators as are present in the Chamber will, as their names are called, advance to the desk and take the oath.

The Secretary called the names of the Senators who had not been heretofore sworn, whereupon Senators Blackburn, Depew, Dryden, Knox, and McLaurin advanced to the area in front of the Secretary's desk and the oath was administered to them by the Presiding Officer.

Mr. FAIRBANKS. I offer the resolution which I send to the desk, for which I ask present consideration.

The resolution was read, considered by unanimous consent, and agreed to, as follows:

*Resolved*, That the Secretary inform the House of Representatives that the Senate is sitting in its Chamber and ready to proceed with the trial of the impeachment of Charles Swayne.

At 1 o'clock and 7 minutes p. m. the Assistant Sergeant at Arms announced the managers on the part of the House of Representatives.

The PRESIDING OFFICER. The managers will be admitted and conducted to the seats provided for them within the bar of the Senate.

The managers were conducted to seats provided in the space in front of the Secretary's desk, on the left of the Chair, namely: Hon. Henry W. Palmer, of Pennsylvania; Hon. Marlin E. Olmsted, of Pennsylvania; Hon. James B. Perkins, of New York; Hon. Henry D. Clayton, of Alabama; Hon. David A. De Armond, of Missouri; and Hon. David H. Smith, of Kentucky.

At 1 o'clock and 14 minutes p. m. Hon. Anthony Higgins and Hon. John M. Thurston, counsel for the respondent, Charles Swayne, entered the Senate Chamber and were conducted to the seats assigned them in the space in front of the Secretary's desk, on the right of the Chair.

The PRESIDING OFFICER. The Secretary will read the minutes of the proceedings of the last session of the Senate while sitting in the trial of the impeachment of Charles Swayne.

The Secretary read the Journal of proceedings of the Senate, sitting for the trial of the impeachment, of Tuesday, January 24, 1905.

The PRESIDING OFFICER. The Secretary will now read the return of the Sergeant at Arms to the summons directed to be served.

The Secretary read the following return appended to the writ of summons:

The foregoing writ of summons, addressed to Charles Swayne, and the foregoing precept, addressed to me, were duly served upon the said Charles Swayne by delivery to and leaving him with true and attested copies of the same at 1215 Tatnall Street, Wilmington, Del., the residence of Henry G. Swayne, on Tuesday, the 24th day of January, 1905, at 7 o'clock and 45 minutes in the afternoon of that day.

DANIEL M. RANDELL,  
*Sergeant at Arms United States Senate.*

The PRESIDING OFFICER. The Secretary will now administer to the Sergeant at Arms an oath in support of the truth of his return.

The Secretary (Mr. Charles G. Bennett) administered the following oath to the Sergeant at Arms:

You, Daniel M. Ransdell, Sergeant at Arms of the Senate of the United States, do solemnly swear that the return made by you upon the process issued on the 24th day of January, 1905, by the Senate of the United States against Charles Swayne, is truly made, and that you have performed such service as therein described. So help you God.

The SERGEANT AT ARMS. I do so swear.

The PRESIDING OFFICER. The Sergeant at Arms will make proclamation.

The SERGEANT AT ARMS. Charles Swayne, Charles Swayne, Charles Swayne, judge of the district court of the United States for the northern district of Florida: Appear and answer to the articles of impeachment exhibited by the House of Representatives against you.

Mr. HIGGINS. Mr. President, on behalf of the respondent, Charles Swayne, I beg to enter the following appearance:

*To the honorable the Senate of the United States, sitting as a court of impeachment:*

I, Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, now present in the city of Washington, having been served with a summons to be in the city of Washington on the 27th day of January, 1905, at 1 o'clock afternoon, to answer certain articles of impeachment presented against me by the honorable the House of Representatives of the United States, do hereby enter my appearance by my counsel, Anthony Higgins and John M. Thurston, who have my warrant and authority therefor, and who are instructed by me to ask this court for a reasonable time for the preparation of my answer to said articles.

CHARLES SWAYNE.

Dated at Washington, D. C., this 27th day of January, A. D. 1905.

I ask that this be filed, and I submit a copy for the managers.

The PRESIDING OFFICER. It will be placed on file.

Mr. THURSTON. On behalf of the respondent we make the following motion:

In the Senate of the United States, sitting as a court of impeachment. The United States of America *v.* Charles Swayne. Upon articles of impeachment presented by the House of Representatives of the United States of America.

The respondent, by his counsel, now comes and moves the court to grant him the period of seven days in which to prepare and present his answer to the articles of impeachment presented against him herein.

ANTHONY HIGGINS.

JOHN M. THURSTON.

Mr. FAIRBANKS. Mr. President, I move the adoption of the order which I send to the desk.

The PRESIDING OFFICER. The Senator from Indiana moves the adoption of an order, which will be read.

The order was read, and agreed to, as follows:

*Ordered*, That the respondent present his answer to the articles of impeachment at 12 o'clock and 30 minutes post meridian on the 3d day of February next.

Mr. Manager PALMER. I move the adoption of the order which I send to the Secretary's desk to be read.

The PRESIDING OFFICER. The proposed order will be read.

The Secretary read as follows:

*Ordered*, That lists of witnesses be furnished the Sergeant-at-Arms by the managers and the respondent, who shall be subpoenaed by him to appear on the 10th day of February, at 1 o'clock post meridian.

*Ordered*, That the cause shall be opened and the trial proceed on the 13th day of February, at 1 o'clock post meridian, unless otherwise ordered.

The PRESIDING OFFICER. Senators, are you ready for the question on the adoption of the order presented by the managers on the part of the House?

Mr. THURSTON. Mr. President——

Mr. Manager PALMER. I move the adoption of the order.

Mr. FAIRBANKS. The reading of the order was not distinctly heard, and I ask that it may be again read for the information of the Senate.

The PRESIDING OFFICER. The proposed order will again be read.

The Secretary again read the order.

Mr. THURSTON. Mr. President, on behalf of the respondent, we desire to say that we have had in mind the important public business that must necessarily be transacted by the Senate between now and the expiration of the session on the 4th of March, and we are disposed in every way consistent with the interests of our client to assist the Senate in expediting this trial. And for our part, while we are not here in the attitude of objecting to any order that the Senate may seek to make, we see no reason why the trial might not proceed just as well on the 10th day of February as on the 13th.

Mr. FAIRBANKS. Mr. President, I ask for a division. Two orders are proposed. I ask that the first may be first considered.

The PRESIDING OFFICER. The request of the Senator from Indiana is entirely within the rules of the Senate. The Secretary will read the first division of the proposed order.

The Secretary read as follows:

*Ordered*, That lists of witnesses be furnished the Sergeant at Arms by the managers and the respondent, who shall be subpoenaed by him to appear on the 10th day of February, at 1 o'clock postmeridian.

Mr. BACON. Mr. President, in order that Senators may vote intelligently upon the order, I suggest that it might be profitable for the managers to state to us the reason why it is not practicable to proceed on the 10th, if such reason there be.

The PRESIDING OFFICER. The first division of the order is now under consideration, providing that the witnesses be directed to appear on the 10th.

Mr. BACON. I did not catch the reading. I withdraw the suggestion until after the pending question is disposed of.

The PRESIDING OFFICER. The question is on agreeing to the first part of the order, which has been read.

Mr. BAILEY. Mr. President, it does not seem to me that there can be any good reason why the managers on the part of the House can not be ready to proceed with this trial on the 3d day of February instead of the 13th. Without intending the slightest criticism of the managers or the House itself, I beg to remind this court that for several months the House has pursued, through its committees, this investigation, and I am perfectly sure that the managers on the part of the House know at this moment all of the important facts involved in this controversy.

This investigation was proposed and directed by the House quite a year ago, or almost. The accused has been through all the allegations and all the testimony against him, and within one week from to-day, it seems to me, the Senate, sitting as a court, could reasonably expect both sides to be ready to proceed.

If this trial is delayed until the 13th of February we will witness the spectacle, to say the least not gratifying, of the Senate being forced

either to hurry with this solemn and important duty or neglect some of its legislative functions. Unless the managers on the part of the House are willing to say that they could not prepare to proceed with the trial of this case upon the day when Judge Swayne makes his answer, I should prefer—I should almost insist—that we enter upon the trial then instead of on the 10th, as suggested by some, or on the 13th, as proposed by the managers on the part of the House.

I sincerely hope that the managers on the part of the House will feel warranted in saying that they will be ready to proceed upon the very day when Judge Swayne shall make his answer.

Mr. SPOONER. Mr. President, if the answer of the respondent is to be exhibited to the Senate on the 3d day of February, it would be undue haste and perhaps injustice to the managers to require them to proceed to trial on that day. The practice is, and in this case it may very easily be a necessity, that the managers of the House will desire to file a replication to the answer. They will not have had opportunity to pursue it until the 3d. They should have opportunity to consider it and to prepare such pleadings in reply to it as they may be advised. So I think they ought not to be required to proceed to trial on the same day that the answer of the respondent is presented to the Senate.

Mr. BAILEY. I suggest to the Senator from Wisconsin that we would proceed with the trial within the meaning of that term, and if the managers on the part of the House desire to have one day or two days to make such reply as they might deem necessary, the court could then allow it. I object merely to the delay of 10 days or the delay of one week after the answer is made being ordered now. Undoubtedly if the court entered upon the trial on the 3d day of February and the managers on the part of the House should ask for time to reply to the answer of Judge Swayne, no Senator would doubt the propriety and justice of allowing it. But they might only want one day, or they might only want two days; and it seems to me that we would save time by ordering the trial to begin then, because by such order it does not necessarily mean that the testimony shall be taken either that or the following day.

Mr. Manager PALMER. Mr. President, on behalf of the managers, I wish to state that under the order which has already been made the respondent has until the 3d of February to answer. The managers will be obliged to submit any replication or exception or demurrer that they may see fit to prepare to the House for its adoption. We shall ask at least two days or perhaps three days for that purpose. That will run the time over until the 6th of February. Then probably an argument will occur on the replication or on the exceptions or on the demurrer or on whatever pleading the managers may see fit to file.

Of course it is not supposed that the proceedings in this case will be suspended until the 13th. It is supposed that between the 3d and the 13th the issues will be framed and the pleadings settled. No lawyer can undertake to prepare a case until the pleadings are settled, until he knows what issues he has to meet. We are not aware and we can not foretell what answer the respondent will make in this case. If the pleadings are settled by the 6th of February and the witnesses are subpoenaed to appear on the 10th and it is ordered that the case shall be opened and the witnesses examined on the 13th,



that will give the managers from the 10th to the 13th to examine their witnesses and to arrange in an orderly way so that the case may be adequately and properly presented to the Senate.

That is the thought which the managers had in presenting this order. I wish to state that the time is as short as it possibly can be. The managers can not get ready any sooner than that, and there will be nothing gained by forcing a trial before that date.

Mr. BLACKBURN. Mr. President, in order that the Senate may be informed just here on what seems to me to be an essential matter, I want to know whether we are to understand from the managers of the House that every pleading that the managers are to prepare, whether in the nature of a reply to an answer or a demurrer or exception—all of these preliminary pleadings—must, in the judgment of the managers, be by them submitted to the House and approved before they have authority to file, and proceed here?

Mr. Manager PALMER. Mr. President—

Mr. BLACKBURN. Will the manager allow me for just a moment! I will complete the question, because I rise simply to get the information that seems to me necessary.

My understanding of it is that the Members of the House who constitute the committee of managers are assumed to be lawyers. Else, I take it, they would not have been selected by the House. I may be entirely in error, but my understanding is that when the House selected them and clothed them with the duty of representing the House in the prosecution of these charges they, and not the House, were charged with the preparation of the pleadings and the bringing of this case to trial, and that they have already the authority of the House. I do not understand—though, as I have said, I may be entirely in error—that they must go back and get additional authority in the nature of approval of every step that they take in the discharge of the duty which the House has put upon them as its managers and representatives in the prosecution of this impeachment.

Mr. Manager PALMER. In answer to the Senator from Kentucky, I will say that we are proceeding in strict accordance with all the precedents, from the first impeachment trial ever had in the Senate down to the last trial that was had, namely, that of William W. Belknap, Secretary of War. The managers have always consulted the House as to the form of pleadings, especially the replication. The House prepares the articles, the House votes on the articles, and necessarily there must be submitted to the House any replication or exceptions or demurrer that the managers may prepare. We only follow the precedents; and while it may be a very violent presumption that the managers are lawyers, we at least are lawyers enough to follow precedent.

The PRESIDING OFFICER.—The Chair wishes to observe at this point that he doubts the propriety of debate between Senators and the managers of the impeachment on the part of the House. He does not speak positively upon that question, not having had an opportunity to examine the precedents.

Mr. FAIRBANKS. We understand that the order which the managers of the House have asked for can not properly be put by them, and I suppose it is the proper practice to regard the order offered as a request. I offer, upon the request of the managers of the House, for present consideration the order which I send to the desk.

The PRESIDING OFFICER. The order will be read.

The Secretary read as follows:

*Ordered*, That lists of witnesses be furnished the Sergeant at Arms by the managers and the respondent, who shall be subpoenaed by him to appear on the 10th day of February, at 1 o'clock postmeridian.

The PRESIDING OFFICER. Senators, are you ready for the question?

Mr. TELLER. Let the order be read again.

The PRESIDING OFFICER. The Senator from Colorado calls for the further reading of the proposed order.

The secretary again read the order.

Mr. BAILEY. Mr. President, I move to strike out the word "tenth" and to insert "third." I may be permitted to say in support of the motion that the very practice suggested by the managers of the House, of reporting back to the House such replication, answer, or demurrer as they may see fit to recommend, emphasizes the necessity of the Senate proceeding with this trial at the earliest possible day.

The PRESIDING OFFICER. The Senator from Texas moves to amend the proposed order as will be stated.

The SECRETARY. In the last line it is proposed to strike out the word "tenth" and insert "third"; so as to read "the 3d day of February."

Mr. BACON. I should like to inquire of the managers, through the Chair, whether there is any difficulty in the witnesses being summoned to appear and their obeying the summons by the 3d?

The PRESIDING OFFICER. The managers will respond.

Mr. Manager PALMER. Mr. President, I should say it would be practically a physical impossibility to get the witnesses here by the 3d. They are in Florida and in Texas and in Louisiana, and by the ordinary courses of travel at this season it would be practically impossible for the Sergeant at Arms to go there, ascertain where the witnesses are, summon them, and bring them here by the 3d.

Secondly, it would be of no use at all to get them here on the 3d; we could not do anything with them, because the pleadings will not have been settled on the 3d. The 3d of February is the day when the respondent is to put in his answer.

The House will ask, and I suppose under the practice will receive, some time to file a replication. There is no use to have the witnesses here until after the pleadings are settled, certainly, and it seems to me to be a reasonable request that the managers should have a few minutes after the witnesses get here to prepare for trial.

Mr. BAILEY. Mr. President, in view of the statement by the managers of the House that it would be a physical impossibility to summon these witnesses and have them here by the 3d, I withdraw the amendment which I proposed.

The PRESIDING OFFICER. The amendment is withdrawn. The question is on agreeing to the order.

The order was agreed to.

Mr. FAIRBANKS. I move, Mr. President, that the Senate sitting for the trial of the impeachment adjourn until Friday, the 3d day of February next, at half past 12 o'clock postmeridian.

The motion was agreed to; and (at 1 o'clock and 40 minutes p. m.) the Senate sitting for the trial of the impeachment adjourned until Friday, February 3, 1905, at 12.30 o'clock p. m.

The managers on the part of the House and the counsel for the respondent withdrew from the Chamber.

The President pro tempore resumed the chair.

Mr. BAILEY. Mr. President, a moment ago, when the Senate was sitting as a court, it was doubted if the managers on the part of the House are permitted under the rules to make a motion. My own opinion is that nobody but a Senator can make a motion to be voted on by the Senate, but it would be a most anomalous situation if an attorney in any kind of a court could not make motions before that court to be acted on by that court. And for my own guidance—I am sure that other Senators are in much the same frame of mind—I should like to have that question settled. If it would be proper, I should like to have the Judiciary Committee report, or if the Senate prefers, a special committee, what have been the practice and the precedents in that respect.

It would be awkward, to say the least of it, if the managers on the part of the House in a trial of this kind should have to solicit some Senator to make a motion which they thought necessary to the presentation of their case.

Mr. BACON. I will state that which will recall to the recollection of the Senator from Texas a fact possibly he has forgotten. The Senate already has a special committee appointed for the purpose of considering all questions of that kind.

Mr. BAILEY. That had escaped my mind; and as there is a special committee of that kind of course that special committee will be prepared to report on it. I should dislike to see the Senate again meet as a court without some understanding as to the power of the managers on the part of the House or counsel on the part of Judge Swayne. Without having looked at the precedents at all, my impression would be that they would be entitled to make the same motions to this court that any attorney would be in any other court.

The PRESIDENT pro tempore. There is a select committee, of which the Senator from Connecticut [Mr. Platt] is chairman, and undoubtedly, the attention of that committee having been called to this question, the Senate will be advised by it.

SENATE, *February 3, 1905.*

[Congressional Record, volume 39, part 2, page 1818.]

The PRESIDENT pro tempore (at 12 o'clock and 30 minutes p. m.). The hour has arrived to which the Senate sitting as a court of impeachment adjourned, and the Senator from Connecticut will please take the chair.

Mr. Platt of Connecticut assumed the chair.

The PRESIDING OFFICER (Mr. Platt of Connecticut). The Senate is now sitting for the trial of the impeachment of Charles Swayne, a judge of the United States in and for the northern district of Florida. The Sergeant at Arms will make proclamation.

The Sergeant at Arms made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives of the United States against Charles Swayne, judge of the district court of the United States in and for the northern district of Florida.

The PRESIDING OFFICER. The following Senators who are now present and who have not been heretofore sworn will please present themselves in front of the desk to receive the oath: Mr. Quarles, Mr. Culberson, and Mr. Foster of Washington.

Mr. Quarles, Mr. Culberson, and Mr. Foster of Washington advanced to the area in front of the Secretary's desk, and the Presiding Officer administered to them the following oath:

You do, each of you, solemnly swear that in all things appertaining to the trial of the impeachment of Charles Swayne, judge in and for the northern district of Florida, now pending, you will do impartial justice, according to the Constitution and laws. So help you God.

The PRESIDING OFFICER. The Sergeant at Arms will notify the managers, if they are in waiting, that the Senate is ready to proceed.

At 12 o'clock and 32 minutes p. m. the managers on the part of the House of Representatives were announced, and they were conducted by the Assistant Sergeant at Arms to the seats assigned them in the area in front of the secretary's desk.

The PRESIDING OFFICER. The Sergeant at Arms will also notify the counsel for the respondent.

Mr. Anthony Higgins and Mr. John M. Thurston, counsel for the respondent, entered the Chamber and were assigned to the seats provided for them in the area in front of the secretary's desk.

The PRESIDING OFFICER. The Journal of the proceedings of the last session of the Senate sitting for the trial of the impeachment of Charles Swayne will now be read.

The Journal of the proceedings of the Senate sitting as a court on Friday, January 27, 1905, was read.

Mr BACON. Mr. President, I am instructed by the special committee of the Senate in the present impeachment case to submit an order relative to the procedure in this case, which it is requested may have present consideration and be adopted.

The PRESIDING OFFICER. The proposed order will be read by the Secretary.

The Secretary read as follows:

*Ordered*, That in all matters relating to the procedure of the Senate sitting in the trial of the impeachment of Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, whether as to form or otherwise, the managers on the part of the House, or the counsel representing the respondent, may submit a request or application orally to the Presiding Officer, or, if required by him, or requested by any Senator, shall submit the same in writing.

In all matters relating immediately to the trial, such as the admission, rejection, or striking out of evidence, or other questions usually arising in the trial of causes in courts of justice, if the managers or counsel for the respondent desire to make any application, request, or objection, the same shall be addressed directly to the Presiding Officer and not otherwise.

It shall not be in order for any Senator to engage in colloquy, or to address questions either to the managers on the part of the House or the counsel for the respondent, nor shall it be in order for Senators to address each other, but they shall address their remarks directly to the Presiding Officer.

The PRESIDING OFFICER. The Senator from Georgia asks unanimous consent for the immediate consideration of the order which has just been read. Is there objection? [A pause] If not, shall it be adopted? [Putting the question.] The order is agreed to.

Mr. SPOONER. Mr. President, as the order is to operate as a suspension, during the time of this trial, of general rules of the Senate upon the subject of impeachment, I think the record should show what the fact is—that the order was unanimously adopted.

## IMPEACHMENT OF JUDGE CHARLES SWAYNE.

The PRESIDING OFFICER. The Presiding Officer will state that the resolution was unanimously adopted. Are counsel for the respondent ready to proceed?

Mr. THURSTON. Mr President, counsel for the respondent now come, and for answer of said Charles Swayne under impeachment herein say:

And the said Charles Swayne, named in said articles of impeachment, comes before the honorable Senate of the United States, sitting as a court of impeachment, and says that this honorable court ought not to have or take further cognizance of the first of said articles of impeachment so exhibited and presented against him, because, he says, the facts set forth in said first article do not, if true, constitute an impeachable high crime and misdemeanor as defined in the Constitution of the United States.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said first article, the said respondent saving to himself all advantages of exception to said first article, for answer thereto saith:

He admits that on the 20th-day of April, 1897, at Waco, in the State of Texas, acting as United States judge in and for the northern district of Florida, he made and presented to R. M. Love, the United States marshal in and for the northern district of Texas, the certificate in writing as set forth in the said first article, and did then and there receive from the said R. M. Love, United States marshal as aforesaid, the sum of \$230 in full payment of the account certified to as aforesaid, and the respondent says that he then and there believed, and still believes and insists, that, under the true meaning and intent of the statutes of the United States allowing the expenses of a district judge of the United States for travel and expenses while holding court outside of his own district, the said claim was just and in strict accordance with the provisions of the law of Congress in that respect enacted; and he denies that he then and there knew or believed said claim to be false, as set forth in said article; and he denies that he signed and presented the said certificate for the purpose of obtaining payment of any false claim; and he denies that he then and there made and used a false certificate, knowing or believing said certificate to be false, all as alleged in said first article; and he denies that he then and there knew or believed that there was then and there justly due him a far less sum than the sum specified in the said certificate, all as alleged and charged in the said first article.

And further answering, respondent says that at the time he made and presented the said certificate he had been, by order of the circuit judge of the United States of the fifth judicial circuit, ordered and directed, as provided by law, to leave the northern district of Florida and proceed to the city of Waco, in the northern district of Texas, and there hold court at said place, the same being outside of his own district; and he says that the statement made in said certificate in that respect was and is true, and that he was necessarily absent from the said northern district of Florida in attendance upon and holding court in the said northern district of Texas 23 days, commencing on the 20th day of April, 1897, as set forth and specified in the said certificate, and the said certificate is in that and all other respects true.

Respondent, further answering, says that at and before the time of proceeding to the said northern district of Texas, under direction and order of the circuit judge of the said circuit, as he was lawfully bound to do, and at the date of the making and presentation of the said certificate to the said United States marshal he was cognizant of and knew the provisions of section 596 of the Revised Statutes of the United States and of the repealing act relating thereto, to wit, paragraph 2 of chapter 133 of the act of Congress of March 3, A. D. 1881; that he was also cognizant of and knew the provisions of the act of Congress of June 11, 1896, relating to the compensation of judges for expenses for attendance and travel while outside of their respective districts engaged in holding terms of the United States courts; and in the making of said certificate and in the setting forth of the amount of his necessary expenses for travel and attendance outside of his district, at the said United States court held at Waco, Tex., it became his duty to construe the said last-specified act of Congress; and he says that to the best of his judgment, and in an honest effort to reach a true conclusion as to the construction and intent and meaning thereof, he reached the conclusion and judgment that under the true construction, intent, and meaning of the said act it was intended by the Congress of the United States that an allowance of \$10 per day should be made to the said judges for the expenses of travel and attendance while holding court outside of their districts, as a fixed and definite allowance and as a reasonable compensation to them, and each of them, for their necessary expenses for such travel and attendance; and respondent says that, so honestly believing it to be the true



construction and intent and meaning of the said act, that he was, under the law, entitled to certify and receive from the Treasury of the United States his compensation for reasonable expenses for attendance and travel at the rate of \$10 per day as a liquidated sum, and with the honest belief that he, this respondent, was entitled to collect and receive from the United States the sum of \$10 per day, as aforesaid, and to certify the said sum of \$10 per day as his reasonable expenses for travel and attendance, this respondent made and presented the said certificate as set forth in said article and received the sum of money therein certified; and he here and now insists that the construction so honestly placed by him upon the said provision of law aforesaid was the true construction, intent, and meaning of the same, as the same was intended to be expressed by the Congress of the United States in the enactment thereof; and he insists that he was entitled to the said compensation of \$10 per day for necessary expenses of travel and attendance while holding court outside of his district, without being required to determine or ascertain at the time of making said certificate as to whether or not said sum of \$10 had actually been paid out by him on each and every of said days, or as to whether or not he had actually incurred on each and every of said days expenses to the full amount of \$10; and respondent denies expressly that he well knew that he was forbidden by law to receive compensation at said rate, but he says he honestly believed at the time he executed said certificate and received said moneys that he was lawfully entitled to so certify and receive the same.

Respondent says that he is fortified and confirmed in his honest belief that the construction so placed by him upon the said provision allowing him reasonable expenses for travel and attendance while holding court outside of his own district was and is right, and that he was entitled to certify to and receive from the United States the amount of \$10 per day, as aforesaid, by the fact that, as he is informed and verily believes, and as the records of the Treasury Department will show, that many of the circuit judges of the United States had long prior to said time placed a similar construction upon section 8 of an act of Congress approved March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," which section 8 provided, in terms similar to the act of Congress under and by virtue of which he so certified to his reasonable expenses for travel and attendance at the rate of \$10 per day, for an allowance to said circuit judges of their "reasonable expenses for travel and attendance, not to exceed \$10 per day," while attending circuit courts of appeals held any place other than where the judges so certifying might reside, and by the further fact, as he is informed and verily believes, and as the records of the Treasury Department will show, that since the enactment of the law hereinbefore referred to, allowing the district judges their reasonable expenses for travel and attendance not exceeding \$10 per day, and at times both prior and subsequent to the date when he made his said certificate and received the said sum of money therein specified, many of said district judges had placed a similar construction upon the said provision of law as the one placed thereon by this respondent and hereinbefore stated.

And respondent says that he attaches to this, his answer to the said article 1, copies of certificates of the Honorable the Secretary of the Treasury, marked, respectively, Exhibits A, et seq., and asks that the same be accepted and taken as a part of this his answer to the said article 1.

Respondent further says that he is informed and verily believes, and he alleges that the records of the Treasury Department will show, that at all times since the enactment by Congress of the several provisions hereinbefore referred to, allowing to the several judges of the courts of the United States their reasonable expenses for travel and attendance at the rate of \$10 per day, many of the said judges of the United States courts have, from year to year and up to the present time, continued in their said construction of the true intent and meaning of the said several provisions, and have certified to and received from the Government of the United States the said sum of \$10 per day for each and every day wherein they were attending courts at other places than within their own circuits and districts as their lawful allowance for reasonable expenses for travel and attendance.

Whereby respondent alleges that the said construction so placed by him upon the provision of the said statute had become, by the contemporaneous judgment and decision of many of the judges of the courts of the United States, the true and accepted construction, intent, and meaning of said provision.

Respondent further says that the various acts of appropriation of the Congress of the United States made from time to time, after full debate and with full knowledge of the construction which had been placed upon the said act, as will more fully appear from the proceedings and debates in Congress in connection with the said appropriations, further show that the construction and true meaning and intent of the said acts of

Congress hereinbefore referred to were and are, as judged and determined by this respondent and by many of the judges of the courts of the United States, as hereinbefore set forth.

Respondent further says that up to the time charges were presented against him in the House of Representatives for alleged violation of the said provisions no suggestion or intimation had ever reached him, emanating from any of the judges of the courts of the United States, that the construction so placed by him upon the said provision was not the true construction, or that it did not represent the true intent and meaning of said act; notwithstanding the fact, as respondent is informed, and verily believes, that the auditing and other officials of the United States Treasury and many of the judges of the courts of the United States well knew and understood that the said construction, so placed upon the said provision by this respondent, was the same construction generally placed thereon by the said judges of the United States and by the officials of the United States having in charge the inspection and allowance of said accounts; and respondent alleges the fact to be that in all his acts and doings in the premises, and in the making of said certificate and receiving of said money as charged in said article 1, he acted honestly, conscientiously, and, as he believed and still believes, in the conscientious performance of his duties, and in accordance with the true construction, intent, and meaning of said provision.

Respondent further says that even if it shall be held and determined that the said construction of the said provision as to its true intent and meaning was erroneous, and not in law a correct construction of the true intent and meaning of the same, nevertheless it is manifestly apparent that the wording of said provision is such that the same might and could, in the exercise of an honest, conscientious, and impartial judicial consideration of the same, be fairly held to mean what this respondent determined and believed it meant when he was called upon, as aforesaid, to construe the same, and to decide as to what he should certify to the United States as his reasonable expenses for travel and attendance while holding court outside of his own district; and respondent says that his action, determination, and adjudication in that respect were free from any purpose or desire to defraud, or to certify to or receive from the United States any other or greater compensation than he was by law justly entitled to, and that all his actions in the premises were without any unlawful or fraudulent purpose or intent to deceive or defraud the Government of the United States; and he should not be adjudged guilty of a high crime or misdemeanor against the United States upon the allegations set forth in the said first article.

## EXHIBIT A.

*Statement showing amounts paid to United States circuit judges as expenses claimed while attending circuit courts of appeals away from their residences, and amounts paid to United States district judges as expenses claimed while holding court out of their own districts or while attending circuit courts of appeals away from their residences, said courts being in the*

*FIFTH CIRCUIT.—July 1, 1902, to June 30, 1903.*

Name of marshal.	Account No.	Place of holding court.	Number of days.	Name of judge.	Amount paid.
W. H. Johnson.....	89901	Atlanta, Ga.....	20	A. P. McCormick.....	\$200.00
W. H. Johnson.....	89901	Atlanta, Ga.....	18	D. D. Shelby.....	180.00
Chas. Fontelleu.....	90562	New Orleans, La.....	47	D. D. Shelby.....	470.00
Chas. Fontelleu.....	90562	New Orleans, La.....	47	Aleck Boarman.....	470.00
Chas. Fontelleu.....	90562	New Orleans, La.....	37	D. A. Pardee.....	370.00
Chas. Fontelleu.....	90562	New Orleans, La.....	17	E. R. Meek.....	170.00
Chas. Fontelleu.....	95551	New Orleans, La.....	88	D. A. Pardee.....	880.00
Chas. Fontelleu.....	95551	New Orleans, La.....	83	A. P. McCormick.....	830.00
Chas. Fontelleu.....	95551	New Orleans, La.....	90	D. D. Shelby.....	900.00
Chas. Fontelleu.....	95551	New Orleans, La.....	5	E. R. Meek.....	50.00
Chas. Fontelleu.....	95551	New Orleans, La.....	14	W. T. Newman.....	140.00
Chas. Fontelleu.....	95551	New Orleans, La.....	64	Aleck Boarman.....	640.00
Chas. Fontelleu.....	96827	New Orleans, La.....	11	D. A. Pardee.....	110.00
Chas. Fontelleu.....	96827	New Orleans, La.....	12	D. D. Shelby.....	120.00
Chas. Fontelleu.....	96827	New Orleans, La.....	12	A. P. McCormick.....	120.00
Chas. Fontelleu.....	96827	New Orleans, La.....	41	Aleck Boarman.....	410.00
A. J. Houston.....	91439	Paris, Tex.....	2	E. R. Meek.....	20.00
A. J. Houston.....	93964	Paris, Tex.....	8	E. R. Meek.....	80.00
A. J. Houston.....	93964	Tyler, Tex.....	41	Charles Swayne.....	410.00
A. J. Houston.....	93964	Paris, Tex.....	3	E. R. Meek.....	20.00
D. N. Cooper.....	92609	Birmingham, Ala.....	31	H. T. Toukmin.....	310.00
G. H. Green.....	93536	Fort Worth, Tex.....	7	D. E. Bryant.....	35.00

TREASURY DEPARTMENT,  
Washington, D. C., January 28, 1905.

I certify that the foregoing is a correct statement from accounts on file in this department.

L. M. SHAW,  
Secretary of the Treasury,  
C. G. T.

## EXHIBIT B.

*Statement showing amounts paid to United States circuit judges as expenses claimed while attending circuit courts of appeals away from their residences, and amounts paid to United States district judges as expenses claimed while holding court out of their own districts or while attending circuit courts of appeals away from their residences, said courts being in the*

SEVENTH CIRCUIT.—July 1, 1902, to June 30, 1903.

Name of marshal paying voucher.	Account No.	Place of holding court.	Number of days.	Name of judge.	Amount paid.
Ames.....	88452	Chicago, Ill.....	2	Jenkins.....	320.00
Ames.....	88452	Chicago, Ill.....	1	Baker, F. E.....	10.00
Ames.....	88452	Chicago, Ill.....	4	Seaman.....	40.00
Ames.....	91604	Chicago, Ill.....	35	Jenkins.....	350.00
Ames.....	91604	Chicago, Ill.....	4	Bunn.....	40.00
Ames.....	91604	Chicago, Ill.....	35	Baker, F. E.....	350.00
Ames.....	91604	Chicago, Ill.....	35	Seaman.....	350.00
Ames.....	91604	Chicago, Ill.....	18	Humphrey.....	180.00
Ames.....	91604	Peoria, Ill.....	11	Humphrey.....	110.00
Ames.....	93882	Chicago, Ill.....	30	Jenkins.....	300.00
Ames.....	93882	Chicago, Ill.....	7	Bunn.....	70.00
Ames.....	93882	Chicago, Ill.....	28	Baker, F. E.....	280.00
Ames.....	93882	Chicago, Ill.....	10	Seaman.....	100.00
Ames.....	93882	Chicago, Ill.....	20	Humphrey.....	200.00
Ames.....	93882	Peoria, Ill.....	2	Humphrey.....	20.00
Ames.....	95604	Chicago, Ill.....	30	Jenkins.....	300.00
Ames.....	95604	Chicago, Ill.....	30	Baker, F. E.....	300.00
Ames.....	95604	Chicago, Ill.....	17	Seaman.....	170.00
Ames.....	95604	Chicago, Ill.....	8	Humphrey.....	80.00
Ames.....	95604	Peoria, Ill.....	11	Humphrey.....	110.00
Ames.....	95604	Chicago, Ill.....	3	Bunn.....	30.00
Ames.....	95604	Chicago, Ill.....	4	Anderson.....	40.00
Lewiston.....	89956	Madison, Wis.....	2	Seaman.....	20.00
Lewiston.....	95938	Madison, Wis.....	4	Seaman.....	40.00
Hitch.....	93925	Springfield, Ill.....	4	Kohlsaat.....	40.00
Pettit.....	95684	Indianapolis, Ind.....	11	Seaman.....	110.00

TREASURY DEPARTMENT,  
Washington, D. C., January 28, 1905.

I certify that the foregoing is a correct statement from accounts on file in this department.

L. M. SHAW,  
Secretary of the Treasury.  
C. G. T.

## EXHIBIT C.

*Statement showing amounts paid to United States circuit judges as expenses claimed while attending circuit courts of appeals away from their residences, and amounts paid to United States district judges as expenses claimed while holding court out of their own districts or while attending circuit courts of appeals away from their residences, said courts being in the*

*NINTH CIRCUIT.—July 1, 1902, to June 30, 1905.*

Name of marshal.	Account No.	Place of holding court.	Number of days.	Name of judge.	Amount paid.
Matthews.....	88355	Portland, Oreg.....	7	Morrow.....	\$70.00
Matthews.....	88355	Portland, Oreg.....	7	Ross.....	70.00
Hopkins.....	88353	Tacoma, Wash.....	17	DeHaven.....	124.00
Hopkins.....	88353	Seattle, Wash.....	8	Gilbert.....	80.00
Hopkins.....	88353	Seattle, Wash.....	13	Ross.....	130.00
Hopkins.....	88353	Seattle, Wash.....	11	Morrow.....	110.00
Shine.....	91447	San Francisco, Cal.....	26	Bellinger.....	260.00
Shine.....	91447	San Francisco, Cal.....	7	Hawley.....	70.00
Shine.....	91447	San Francisco, Cal.....	47	Ross.....	470.00
Shine.....	91447	San Francisco, Cal.....	49	Gilbert.....	490.00
Hopkins.....	90385	Tacoma, Wash.....	11	DeHaven.....	79.75
Shine.....	88266	San Francisco, Cal.....	3	Hawley.....	30.00
Shine.....	88266	San Francisco, Cal.....	7	Gilbert.....	70.00
Shine.....	88266	San Francisco, Cal.....	10	Ross.....	100.00
Shine.....	88266	San Francisco, Cal.....	62	Beatty.....	434.00
Shine.....	93794	San Francisco, Cal.....	44	Ross.....	440.00
Shine.....	93794	San Francisco, Cal.....	49	Gilbert.....	490.00
Shine.....	93794	San Francisco, Cal.....	19	Bellinger.....	190.00
Shine.....	93794	San Francisco, Cal.....	16	Hawley.....	150.00
Shine.....	95307	San Francisco, Cal.....	31	Ross.....	310.00
Shine.....	95307	San Francisco, Cal.....	23	Hawley.....	220.00
Shine.....	95307	San Francisco, Cal.....	40	Gilbert.....	400.00

TREASURY DEPARTMENT,  
Washington, D. C., January 28, 1905.

I certify that the foregoing is a correct statement from accounts on file in this department.

I. M. SHAW,  
Secretary of the Treasury.  
C. G. T.

Respondent asks leave to attach hereto further similar exhibits, when received from the Secretary of the Treasury, showing the amounts certified to and received by the several judges of the United States in the other circuits for the year 1903, as their reasonable expenses for travel and attendance while holding court away from their places of residence, or outside of their respective districts.

## ANSWER TO ARTICLE SECOND.

And the said Charles Swayne, named in the articles of impeachment, says that this honorable court ought not to have or take further cognizance of the second of said articles of impeachment so exhibited and presented against him, because he says the facts set forth in the said second article do not, if true, constitute an impeachable high crime and misdemeanor as defined in the Constitution of the United States.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said second article, the said respondent saving to himself all advantages of exception to said second article, for answer thereto saith:

He admits that prior to the year 1900 he had been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, and had entered upon the duties of his office, and was in the exercise of his office as judge as aforesaid at all times in the said article specified and as therein alleged.

Further answering, respondent says he admits that he was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not exceeding \$10 per diem, to be paid upon his certificate by the United States marshal for the district in which



the court was held, all as alleged in said article second; and respondent says that he was, at the time specified in said article second, absent from the said northern district of Florida, and was engaged in holding court at Tyler, Tex., under and by virtue of an order in that respect made by the circuit judge of the fifth judicial circuit of the United States; and he alleges that he was necessarily absent from his district attending and holding court at the said Tyler, Tex., and in going to and returning from said Tyler, Tex., as many days as he certified to in any certificate made by him and presented to the United States marshal for the eastern district of Texas, certifying to the amount of his reasonable expenses for travel and attendance while absent from his district to attend and hold the said court at Tyler, Tex.

Respondent says that he has not in his possession, and has not seen, since the time it was presented to the said United States marshal for the eastern district of Texas, the certificate which he made at that time setting forth his reasonable expenses for travel and attendance as aforesaid, and is not now able to remember or state the particular number of days specified in the said certificate, representing the time he was absent from his district in attending and holding court at the said Tyler, Tex., but he says that whatever number of days may appear in said certificate as having been so certified to by him were the true number of days he was absent from his said district in attending and holding court at Tyler, Tex., in pursuance of the order of the circuit judge of the fifth judicial circuit, as above stated; and respondent says that he did receive from the United States marshal for the eastern district of Texas, at or about the time stated in said article second, a sum of money as set forth in the said certificate, the exact amount of which this respondent is not able now to remember or state, but which represented an amount equal to \$10 per diem for each of the days stated in said certificate during which this respondent had been absent from his district attending and holding court at the said Tyler, Tex.

Respondent denies the allegation, in said article second contained, wherein it is alleged that at the said time he so certified he well knew that he was forbidden by law to receive compensation for his necessary travel and attendance while holding court outside of his own district, at the rate of \$10 per diem as certified in the said certificate, and he denies that he falsely certified as set forth and alleged in said article second.

Respondent, for further answer, says that in all his acts and doings, and in the making of the certificate and receiving the sum of money therein certified to, as hereinbefore stated, he believed at the time, and still believes, that the true construction and the true intent and meaning of the law of the United States providing for the payment for his reasonable expenses for travel and attendance as aforesaid, was, and is, as by him more fully set forth and stated in his answer herein to the first of the articles of impeachment presented against him herein; and with respect thereto he hereby reiterates and reaffirms all of the allegations and statements in said answer to said first article contained, and adopts the same as his further and complete answer to the said article second, and asks that the said allegations and statements in said answer to the said first article shall be taken and accepted as his further and complete answer to the allegations of said article second, as fully and with the same force and effect as if they were herein specifically reiterated and set forth, and prays equal benefit therefrom as if the same were here again fully repeated.

#### ANSWER TO ARTICLE THIRD.

And the said Charles Swayne, named in the articles of impeachment, says that this honorable court ought not to have or take further cognizance of the third of said articles of impeachment so exhibited and presented against him, because, he says, the facts set forth in the said third article do not, if true, constitute an impeachable high crime and misdemeanor, as defined in the Constitution of the United States.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said third article, the said respondent, saving to himself all advantages of exception to said third article, for answer thereto saith:

He admits that prior to the year 1900 he had been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida and had entered upon the duties of his office, and that he was in the exercise of his office as judge as aforesaid at all times in the said article specified and as therein alleged.

Further answering, respondent says he admits that he was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not exceeding \$10 per diem,

to be paid upon his certificate by the United States marshal for the district in which the court was held, all as alleged in said article third; and respondent says that he was at the time specified in said article third absent from the said northern district of Florida and was engaged in holding court at Tyler, Tex., under and by virtue of an order in that respect made by the circuit judge of the fifth judicial circuit of the United States; and he alleges that he was necessarily absent from his district attending and holding court at the said Tyler, Tex., and in going to and returning from said Tyler, Tex., as many days as he certified to in any certificate made by him and presented to the United States marshal for the eastern district of Texas certifying to the amount of his reasonable expenses for travel and attendance while absent from his district to attend and hold the said court at Tyler, Tex.

Respondent says that he has not in his possession, and has not seen since the time it was presented to the said United States marshal for the eastern district of Texas, the certificate which he made at that time, setting forth his reasonable expenses for travel and attendance as aforesaid, and is not now able to remember or state the particular number of days specified in said certificate, representing the time he was absent from his district in attending and holding court at the said Tyler, Tex., but he says that whatever number of days may appear in said certificate as having been so certified to by him were the true number of days he was absent from his said district in attending and holding court at Tyler, Tex., in pursuance of the order of the circuit judge of the fifth judicial circuit, as above stated; and respondent says that he did receive from the United States marshal for the eastern district of Texas, at or about the time stated in said article third, a sum of money, as set forth in said certificate, the exact amount of which this respondent is not now able to remember or state, but which represented an amount equal to \$10 per diem for each of the days stated in said certificate during which this respondent had been absent from his district attending and holding court at the said Tyler, Tex.

Respondent denies the allegation in said article third contained wherein it is alleged that at the said time he so certified he well knew that he was forbidden by law to receive compensation for his necessary travel and attendance while holding court outside of his own district at the rate of \$10 per diem, as certified in the said certificate; and he denies that he falsely certified as set forth and alleged in said article third.

Respondent, for further answer, says that in all his acts and doings, and in the making of the certificate and receiving the sum of money therein certified to, as hereinbefore stated, he believed at the time, and still believes, that the true construction and the true intent and meaning of the law of the United States providing for the payment for his reasonable expenses for travel and attendance as aforesaid was, and is, as by him more fully set forth and stated in his answer herein to the first of the articles of impeachment presented against him herein; and with respect thereto he hereby reiterates and reaffirms all of the allegations and statements in said answer to said first article contained, and adopts the same as his further and complete answer to the said article third; and asks that the said allegations and statements in said answer to the said first article shall be taken and accepted as his further and complete answer to the allegations of said article third as fully and with the same force and effect as if they were herein specifically reiterated and set forth, and prays equal benefit therefrom as if the same were here again fully repeated.

#### ANSWER TO ARTICLE FOUR.

And the said Charles Swayne, named in the articles of impeachment, says that this honorable court ought not to have or take further cognizance of the fourth of said articles of impeachment so exhibited and presented against him, because he says the facts set forth in the said fourth article do not, if true, constitute an impeachable high crime and misdemeanor as defined in the Constitution of the United States.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said fourth article, the said respondent, saving to himself all advantages of exception to said fourth article, for answer thereto saith:

He admits that he was duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida, and that he had entered upon the duties of his office prior to 1893 and has continued in the performance of the duties and in the exercise of his office of judge up to the present time.

He denies that at the time specified in said article 4, to wit, A. D. 1893, he did unlawfully appropriate to his own use, without making compensation to the owner, a certain railway car belonging to the Jacksonville, Tampa & Key West Railroad Co., for the purposes stated in said article 4, or for any other purpose or purposes what-

soever; and as to the true facts of the transaction referred to in said article 4, he says that at about the time stated in said article the Jacksonville, Tampa & Key West Railroad Co. was in the possession of a receiver, which said receiver was not appointed by this respondent, as alleged in said article, but was appointed by the Hon. Don A. Pardee, circuit judge in and for the fifth judicial circuit of the United States, in which appointment this respondent concurred. That a part of the regular equipment of said railroad company, at and before the appointment of a receiver therefor, consisted of a certain railroad car, generally known as an official car, which said car had been provided and was kept, as is and has been the custom generally throughout the United States in the carrying on and in the management of railway lines and systems, for the use of the officials of said railway; and respondent says said car was not a part of the equipment of said railroad kept or held for hire, or for the transportation of passengers therein over the lines of the said railroad, or elsewhere; but the same was provided and kept for the use and convenience of the officials of said road; and respondent says that it was the custom of the said railroad, as it was and is the general custom of the railroads of the country, to extend from time to time, when said car was not in use and not needed for railway purposes, the complimentary use of the same to friends and patrons of the said railroad. Respondent says that the porter who was in charge of said car, and who accompanied it upon the trip described in said article 4, was the regular porter in charge of said car; that he was a regular employee of said company who was employed for the purpose of taking charge and care of said car throughout the year, and who remained in charge and custody of the same throughout the year whether it was in use or not; that he was so employed by the year on a regular stated, fixed, compensation, payable monthly, and his wages remained the same and were paid by the company to him in the same amount during each and every month in the year, whether the said car was in use or not.

Respondent further says that at or about the time stated in said article 4 he was at Guyencourt, in the State of Delaware, and the managing official of the said railroad company knowing of his desire to proceed from thence to Jacksonville, Fla., accompanied by certain members of his family, voluntarily, and without solicitation upon the part of this respondent, tendered the use of said car to this respondent for the purpose of making the trip.

Respondent says that at said time it was and had been the general custom prevailing among the railway lines and systems of the country to furnish, each to the other, transportation for the private or official cars of each of the said railroads over any of the lines of the others, together with transportation for whatsoever persons might be in the occupation of the same at the time; and respondent is informed, and believes, and so alleges the fact to be, that the managing official of the said railroad company had secured from the necessary connecting lines transportation of the nature and character as above set forth, whereby the said car was to be transported over the said lines as a matter of compliment from the one railroad company to the other; and neither the transportation of the said car, or of the persons who occupied the same on its trip alleged in article 4, cost the said Jacksonville, Tampa & Key West Railroad anything; and the entire transportation of the said car and the persons therein at the time was absolutely without expense to the said last-named railroad company or to the receiver of the same; and in and about the transportation of the said car and the persons therein at the time, there was no expense of any kind incurred or paid by the said last-named railroad company or its receiver except in this, to wit, that the said railroad company at the time of the said trip had placed certain provisions in and upon the said car, in a very small amount and of trifling cost, and there was used of the said provisions upon the said trip sufficient of the same for two meals to the parties occupying the said car on the said trip, and no more.

Respondent further alleges that he accepted the use of the said car for the said trip so voluntarily tendered to him as an act of courtesy which could in no manner or in any way enter into the administration of the affairs of the said railroad company under its said receivership.

Respondent says that as to the said two meals enjoyed by the occupants of the said car on the said trip, which said trip was only of the duration of about 23 hours, the value of the same was so trivial that it could not appear and did not appear in any account of the said receiver upon which he, as the judge of the said district court, might be called upon to pass; and respondent reiterates his allegation that the said trip and the use of the said car was without expense to the said railroad company or to the receiver thereof, and he says that the funds of the said Jacksonville, Tampa & Key West Railroad Co. were in no wise diminished by reason of the use of the said car for the said trip.

Respondent further says that he did not, as alleged in said article 4, use the said car or make the said trip under a claim of right, but that the trip was made solely and

because the use of said car and transportation for said trip had been so voluntarily tendered to him as aforesaid; and respondent denies that by reason of the premises he was guilty of any abuse of judicial power, or that his judicial actions were in any way influenced thereby, or that he was placed, as a public official, under any obligation, express or implied, to said railroad or the receiver thereof; and he says that the complimentary tender of said car and his acceptance of the same was a personal matter having no relation to or effect upon his official position or action.

## ANSWER TO ARTICLE FIFTH.

And the said Charles Swayne, named in the articles of impeachment, says that this honorable court ought not to have or take further cognizance of the fifth of said articles of impeachment so exhibited and presented against him, because he says the facts set forth in the said fifth article do not, if true, constitute an impeachable high crime and misdemeanor as defined in the Constitution of the United States.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said fifth article, the said respondent, saving to himself all advantages of exception to said fifth article, for answer thereto saith:

He admits that he was duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida, and had entered upon the duties of his office prior to the year 1893, and had continued in the performance of the duties and in the exercise of his said office of judge up to the present time.

He denies that at the time specified in said article 5 he did unlawfully appropriate to his own use, without making compensation to the owner, a certain railway car belonging to the Jacksonville, Tampa & Key West Railroad Co. for the purpose stated in said article 5, or for any other purpose or purposes whatsoever; and as to the true facts of the transaction referred to in said article 5, he says that at about the time stated in said article the Jacksonville, Tampa & Key West Railroad Co. was in the possession of a receiver, which said receiver was not appointed by this respondent, as alleged in said article, but was appointed by the Hon. Don. A. Pardee, circuit judge in and for the fifth judicial circuit of the United States, in which appointment this respondent concurred; that a part of the regular equipment of said railroad company at and before the appointment of a receiver therefor consisted of a certain railroad car, generally known as an official car, which car had been provided and was kept, as is and has been the custom generally throughout the United States in the carrying on and in the management of railway lines and systems, for the use of the officials of said railroad; and respondent says said car was not a part of the equipment of said railroad kept or held for hire or for the transportation of passengers therein over the lines of the said railroad or elsewhere, but the same was provided and kept for the use and convenience of the officials of said road; and respondent says that it was the custom of the said railroad, as it was and is the general custom of the railroads of the country, to extend, from time to time, when said car was not in use and not needed for railway purposes the complimentary use of the same to friends and patrons of the said railroad.

Respondent says that the porter who was in charge of the said car, and who accompanied it upon the trip described in said article 5, was the regular employee of said company, who was employed for the purpose of taking charge; and care of said car throughout the year, and who remained in charge and custody of the same throughout the year, whether it was in use or not; that he was so employed by the year on a regular, stated, fixed compensation, payable monthly, and his wages remained the same and were paid by the company to him in the same amount during each and every month during the year, whether the said car was in use or not.

Respondent says that at or about the time stated in said article 5 the managing official of said railroad company, without solicitation upon the part of this respondent, tendered the use of said car as a convenience to this respondent and the friends who accompanied him in making a trip over certain lines of connecting railway to the Pacific coast and returning from thence, as alleged in said article 5.

Respondent says that at said time it was and had been the general custom prevailing among the railway lines and systems of the country to furnish, each to the other, transportation or passage for the private or official cars of each of the said railroad over any of the lines of the others, together with transportation for whatsoever persons might be in the occupation of the same at the time; and respondent is informed and believes and so alleges the fact to be that the managing official of said railroad company had secured from the necessary connecting lines transportation of the nature and character as above set forth, whereby the said car was to be transported over the said lines as a matter of compliment from the one railroad company to the other; and neither the transportation of the said car nor of the persons who occupied the same on



its trip alleged in said article 5 cost the said Jacksonville, Tampa & Key West Railroad anything, and the entire transportation of the said car and the persons therein at the time was without expense to the said last-named railroad company or to the receiver of the same; and in and about the transportation of the said car and the persons therein at the time there was no expense of any kind incurred or paid by the said last-named railroad company or its receiver.

Respondent denies that the said car was supplied with any provisions by the said receiver, as alleged in said article 5, except in this, that there had remained upon the said car, at the time respondent began his said trip, a few provisions and supplies left over from some previous use of the car by the officials of the said railroad company; these certain provisions and supplies were of a very small amount and of trifling cost.

Respondent says that upon the said trip he provided all of the provisions and supplies of every kind and character used by himself and friends upon the entire trip: that he paid for the same, and that they were so supplied by him without any cost or expense to the said railroad or its receiver.

He further says that upon his return from said trip, when the said car was turned back to the possession of the said railroad company and said receiver, there were left upon said car by this respondent certain of the provisions and supplies so purchased by him and not used upon said trip, which said provisions and supplies were left in said car and were of more than of equal value to those that were in the car at the time this respondent commenced his trip as aforesaid.

Whereby he insists and alleges that the said railroad company did not incur any expense in and about his use of the said car, or in and about the consumption of supplies thereon, or in and about the transportation of the same in any way, of any sum whatsoever, and that the entire trip was so made without cost or expense to the said railroad company or its receiver.

Respondent further alleges that he accepted the use of the said car for the said trip so voluntarily tendered to him as an act of courtesy which could in no manner or in any way enter into the matter of the administration of the affairs of the said railroad company under its said receivership.

Respondent further says that none of the expenses whatever incurred in and about the said trip of any kind or character did or could appear in any account of the said receiver upon which he, as judge of the said district court, might be called upon to pass.

Respondent reiterates his allegation that the said trip and the use of the said car was without expense to the said railroad company, or to the receiver thereof; and he says that the funds of the said Jacksonville, Tampa & Key West Railroad Co. were in no wise diminished by reason of the use of the said car for the said trip.

Respondent further says that he did not, as alleged in said article 5, use the said car or make the said trip under a claim of right, but that the trip was made solely because the use of said car and transportation for said trip had been so voluntarily tendered to him as aforesaid.

Respondent denies that by reason of the premises he was guilty of any abuse of any judicial power, or that his judicial acts were in any way influenced thereby, or that he was placed in any way, as a public official, under any obligation, express or implied, to said railroad or to the receiver thereof; and he says that the complimentary tendering of said car and his acceptance of the same was a personal matter, having no relation to or effect upon his official position or action.

#### ANSWER TO ARTICLE SIX.

And the said Charles Swayne, named in said articles of impeachment, says that this honorable court ought not to have or take further cognizance of the sixth of said articles of impeachment so exhibited and presented against him, because, he says, the facts set forth in said sixth article do not, if true, constitute an impeachable high crime and misdemeanor as defined in the Constitution of the United States.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said sixth article, the said respondent saving to himself all advantages of exceptions to said sixth article, for answer thereto saith:

He admits that prior to the year 1900 he had been duly appointed, confirmed, and commissioned as judge of the United States, in and for the northern district of Florida, and had entered upon the duties of his office, and that he was in the exercise of his office as judge as aforesaid at all times in the said article specified and as therein alleged.

The respondent denies that he did not acquire a residence in the northern district of Florida and did not, within the intent and meaning of the five hundred and fifty-



first section of the Revised Statutes of the United States, reside in said district from the 23d day of July, 1894, to the 1st day of October, 1900; and denies that he violated said section; and denies that he was and is guilty of a high misdemeanor in office as charged in said article 6.

The respondent further says that his residence now is in Pensacola, in the northern district of Florida, and that such residence began shortly after the passage of the act of July 23, 1894, which excluded from said district St. Augustine, his previous residence, and has continued down to the present time, his local abode now being at No. 13 West La Rua Street, Pensacola, where he has resided since October 1, 1903; and he says his local abode prior to October 1, 1903, and from and after October 1, 1900, was in the Simmons cottage on Belmont Street, Pensacola; and that his local abode prior to October 1, 1900, and from and after the beginning of his residence in Pensacola, was at times at the Escambia Hotel and at times at the boarding house of Capt. William H. Northrop on West Gregory Street in said city.

The respondent says that while he lived at West La Rua Street and in the Simmons cottage his family lived with him; at other times they remained at his former home in St. Augustine or went to different places in Delaware, or visited New Orleans or traveled in Europe, and occasionally members of the family visited him at the Escambia Hotel and at the house of said Capt. Northrop.

The respondent also says that he went from Pennsylvania to Florida in 1885, to practice law, and lived in Sanford and afterwards in Kissimmee; that on June 1, 1889, during the recess of Congress, he was appointed and commissioned district judge for the northern district of Florida, and on the 1st day of April, 1890, was recommissioned after confirmation by the Senate; and that in October, 1890, he became a resident of St. Augustine, Fla., and with his family began living in a rented house furnished by himself.

The respondent says that after the passage of the act of July 23, 1894, when he became a resident of Pensacola, it was deemed advisable that his family should not wholly give up housekeeping in the house in St. Augustine until a suitable and desirable house could be found within the limits of the said northern district as reduced by said act; and the respondent made repeated efforts to find such a house, but without immediate success.

The respondent says that he had at all times, from his first residence in Florida in 1885, been in the habit, with his family, of visiting each summer in Delaware, at the residence of his father and mother, and this custom continued in 1894 and always afterwards.

Shortly after the passage of the act of 1894 the respondent began holding court, under due assignment, in Alabama, Louisiana, and Texas; and at various times, beginning in New Orleans in April, 1895, he has held court at Birmingham, Huntsville, New Orleans, Baton Rouge, Dallas, Fort Worth, Graham, Waco, and Tyler. During the winter of 1897-98 his family was with him in New Orleans. On July 9, 1898, the respondent with his family sailed for Europe, and in September of that year the respondent returned, leaving his family in Germany, went to Pensacola, held court there, and then, by direction of the circuit judge, proceeded to New Orleans and other points to hold court, his family returning from Europe in July, 1899.

Before October 1, 1900, the respondent had found and rented the Simmons cottage on Belmont Street, Pensacola, and on that date his family came there to live, the house in St. Augustine in the years 1897, 1898, 1899, and 1900 having been rented with the furniture of the respondent to various tenants.

So the respondent says that, notwithstanding the dismemberment, out of undeserved hostility to him, of the northern judicial district, by taking 20 large counties therefrom and leaving it a district comprising not a third of the State, with very little judicial business to be performed therein, while enlarging the other district so as to make it embrace two-thirds of the State and three-fourths of the business of the State, he proceeded within a reasonable time to comply with his obligation under section 551 of the Revised Statutes and the act of July 23, 1894, to remove his residence from the city of St. Augustine, which was in his original but not in his reduced district, and to make a new residence within the latter, and to promptly perform all his official duties therein; nor have his occasional absences to see his family while they tarried at St. Augustine or elsewhere, and to hold court in Alabama, Louisiana, and Texas, and to visit his mother's home in Delaware during the summers, and to travel one summer in Europe, in any way embarrassed or hindered the public business committed to his charge; nor has the delay of his family at St. Augustine and while wintering at New Orleans and in Europe, and sojourning in Delaware before coming for constant living with him at his new home, in any way impaired the legality, good faith, sufficiency, and completeness of his residence since 1894 at Pensacola, in the northern district of Florida.

## ANSWER TO ARTICLE SEVEN.

And the said Charles Swayne, named in said articles of impeachment, says that this honorable court ought not to have or take further cognizance of the seventh of said articles of impeachment so exhibited and presented against him, because he says the facts set forth in said seventh article do not, if true, constitute an impeachable high crime and misdemeanor as defined in the Constitution of the United States.

And now, not waiving the foregoing plea to the jurisdiction of the honorable Senate of the United States, sitting as a court of impeachment, as to said seventh article the said respondent, saving to himself all advantages of exception to said seventh article, for answer thereto saith:

He admits that prior to the year 1900 he had been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida and had entered upon the duties of his office, and that he was in the exercise of his office as judge as aforesaid at all times in the said article specified and as therein alleged.

The respondent denies that he did not acquire a residence in the northern district of Florida and did not, within the intent and meaning of the five hundred and fifty-first section of the Revised Statutes of the United States, reside in said district from the 23d day of July, 1894, to the 1st day of January, 1903, and denies that he violated said section; and denies that he was and is guilty of a high misdemeanor in office, as charged in said article 7.

The respondent further says that his residence now is in Pensacola, in the northern district of Florida, and that such residence begun shortly after the passage of the act of July 23, 1894, which excluded from said district St. Augustine, his previous residence, and has continued down to the present time; and the respondent reiterates and reaffirms all the allegations and statements contained in his answer to the sixth of the articles of impeachment presented against him, and adopts the same as his further and complete answer to said article 7, and asks that said allegations and statements in said answer to said article 6 shall be taken and accepted as his further and complete answer to the allegations of said article 7, as fully and with the same force and effect as if they were herein specifically reiterated and set forth, and prays equal benefit therefrom as if the same were here again fully repeated.

## ANSWER TO ARTICLE EIGHT.

And the said respondent, saving to himself all advantages of exception or otherwise to article 8 of the said articles of impeachment, for answer thereto saith:

He admits that prior to the 12th day of November, A. D. 1901, he had been duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida, and had entered upon the duties of his office prior to said date, and continued in the performance of the duties and in the exercise of his office of judge up to the present time, and he says that at all the times mentioned in said article 8 he was exercising and performing the duties of a district judge in and for the northern district of Florida, and that on the 12th day of November, A. D. 1901, he was holding a session of the district and circuit court of said district at the city of Pensacola, in the State of Florida, and he admits that on said date he did adjudge guilty of contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days one E. T. Davis, an attorney and counselor at law, as set forth in said article 8, but he denies that said judicial action on his part was malicious or unlawful, and, on the contrary, he insists and asserts that said judgment was rendered and said sentence imposed by him from a high sense of judicial and public duty, and that upon the proceedings then pending and heard before him he could not have done otherwise than to have adjudged the said E. T. Davis guilty of the contempt of court stated in said article 8.

Respondent, further answering, says that on the 15th day of February, 1901, Simeon Belden and Louis P. Paquet, attorneys and counselors at law, instituted in the said United States circuit court in and for the northern district of Florida a suit in ejectment in favor of one Florida McGuire, and against the Pensacola City Co. and twenty or more persons named as defendants. Said suit was brought to recover the possession of a tract of land known as the Chaveaux tract, within the limits of the city of Pensacola, Fla., containing 300 arpents, more or less, and divided into lots, blocks, and streets; that prior to the November term, 1901, of said court, the said cause by pleadings therein was at issue and upon the trial docket subject to call for trial at said term, which said term began on the 5th day of November, 1901, at Pensacola, Fla.

Respondent says that prior to November 5, 1901, the said attorneys, Simeon Belden and Louis P. Paquet, as attorneys for the said Florida McGuire, presented to respond-

ent as judge of the said court a suggestion that he was disqualified to try the said case, because it was said that respondent claimed some right, title, or interest in and to some portion of the said real estate in litigation in said suit; that upon the opening of said court on the 5th day of November, 1901, this respondent presiding therein as judge, respondent stated from the bench that he had been asked to recuse himself on the trial of the said case so pending as aforesaid, for the reason that he had, or claimed to have, some right, title, or interest in the subject matter in said case involved, to wit, the said real estate.

Respondent then and there made the statement in open court, which statement was and is true, that he had and claimed no right or interest whatever in the said subject matter of said case, to wit, said real estate or any part thereof, and this respondent thereupon declined and refused to recuse himself as requested, which action of respondent was right, proper, and consistent with the dignity of the said court, wherein he was presiding as judge; that upon Saturday, the 9th day of November, 1901, said court then and there being in session, the criminal docket was completed and the court took up the civil docket of said court and began to call the cases thereon to ascertain as to whether or not the same were or would be ready for trial.

At said time the said Louis P. Paquet, the said Simeon Belden, and E. T. Davis, named in said article 8, all then and there being attorneys at law, and all of them members of the bar and officers of the said court, and all of them appearing, or being interested, as attorneys in the said case then and there pending, urged a postponement of the trial of the said case upon the ground that they were not ready with their witnesses and that the said Louis P. Paquet had a matter of business to attend to at New Orleans on the following Tuesday, November 12.

Respondent at said time announced his willingness as judge of said court to postpone the trial of the case in accordance with the request of counsel for Florida McGuire, but the counsel for the defendants in said case, then being present, insisted that there was no good cause shown why a postponement of the trial should be had, and further insisted that the trial should proceed when the said case was reached. No showing in writing having been made, and no showing at all having been made except as above stated, this respondent announced that the said case would be called for trial on the following Monday, November 11, and would then be tried unless the plaintiff in said case should show cause why a postponement of said trial should be ordered.

Said Louis P. Paquet, Simeon Belden, and E. T. Davis, then being present and being attorneys of record or acting as attorneys in said case, stated in open court that they would present to the court a showing on the said Monday morning why a postponement of the trial should be had.

Respondent further says that he adjourned his said court on the said Saturday, the 9th day of November, 1901, at about 6 o'clock p. m., until 10 o'clock a. m. of the following Monday.

Respondent says that thereupon the said Louis P. Paquet, Simeon Belden, and E. T. Davis, officers and attorneys of the said court, retired from said court and confederated and conspired together to obstruct, thwart, interfere with, hinder, and delay the due and regular course of justice by the commencement of a suit in a State court of Florida, and by newspaper publications, whereby they would cause it to appear that this respondent had and claimed to have some right, title, or interest in and to one certain portion of the tract of land the subject matter of said case in ejectment, the said attorneys and each and all of them then and there well knowing that this respondent did not have and did not claim to have any right, title, or interest in and to any portion of the said land, the subject matter of the said ejectment case; and so confederating and conspiring together, they began a suit in a State court, to wit, the circuit court of Escambia County, Fla., in the name of the said Florida McGuire, against this respondent, as a defendant in said suit, and caused to be issued out of the said court a writ against this respondent summoning him to be and appear in the said State court to make answer therein to the allegation that he had and claimed some right, title, and interest in and to a portion of the said tract of land, the subject matter of said suit in ejectment, then pending in the said United States district court, which said writ was served upon this respondent on the evening of said Saturday, November 9, 1901, at about 9 o'clock.

Respondent says that at all of said times each of the three persons above named well knew that this respondent did not have and did not claim to have any rights title, or interest whatsoever in any of the said real estate, the subject matter as aforesaid in the said suit in ejectment in the said United States court, and respondent says that the said three persons so conspiring and confederating together brought said suit and caused said writ to be issued and served upon respondent, well knowing the fact,

aforesaid, for the sole purpose, of placing this respondent in such a position upon the record and before the bar and people that he could not preside in the said court upon the trial of the said ejectment case and would thereby be compelled to continue the same over to some other term of court when another judge could be present and conduct the trial of the same.

Respondent says that the said three persons further confederating and conspiring together for the purposes aforesaid, and to obstruct, interfere with, hinder, and delay the due and proper administration of justice in the said circuit court of the United States, further caused to be prepared and published in the Daily Press of Sunday morning, November 10, 1901, a newspaper published and in general circulation in the city of Pensacola, Fla., an article as follows:

"Judge Swayne summoned as party to the suit in case of Florida McGuire v. Pensacola Company et al.

"A decided move was made in the now celebrated case of Mrs. Florida McGuire, who is the owner, by inheritance, and claims the possession of what is known as the 'Rivas tract,' in the eastern portion of the city, near Bayou, Tex., by the filing of a præcipe for summons, through her attorneys, ex-Attorney General Simeon Belden, Judge Louis P. Paquet, of New Orleans, and E. T. Davis, of this city, in the circuit court of Escambia County, in an ejectment proceeding for possession of block 91, as per map of T. C. Watson, which is part of the property which is claimed by Mrs. Florida McGuire, and which it is alleged that Judge Swayne purchased from a real estate agent in this city during the summer months, and which is a part of the property now in litigation before him.

"The summons was placed in the hands of Sheriff Smith late last night for service."

All of which said acts, as hereinbefore stated, constituted a contempt of said United States district court upon the part of the said three persons, and of each of them, attorneys and counselors at law and officers of said court; impugned the motives and the honesty and integrity of this respondent as a judge; placed upon the public records of a court and in the public press a false and untrue statement, which, if true, would have disqualified and prevented this respondent, as judge of the said United States circuit court, from proceeding to, or sitting in, the trial of the said ejectment case, then and there pending and called for trial; constituted an attempt to intimidate this respondent in the performance of his judicial duties; sought to compel him to continue said ejectment suit to another term of court, and thereby deny to the parties defendant in said ejectment suit their right to a speedy trial therein in said court and before this respondent as presiding judge thereof; greatly tended to obstruct, prevent, hinder, delay, and embarrass the due administration of justice in said court, and to subject the said court and the presiding judge thereof, this respondent, to public criticism, contumely, and contempt; and respondent says all of said confederating and conspiring, and all said acts of the three said persons, constituted a violation of their oaths and of their official duties as attorneys and officers of said court.

Respondent says that thereafter, to wit, on the 11th day of November, 1901, said United States circuit court being then and there in session at Pensacola, Fla., one W. A. Blount, an attorney of said court, presented and filed in said court the following motion or information in writing:

"And now comes W. A. Blount, an attorney and counselor at law of this court, and practicing therein, and as amicus curiæ, and moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court, at a day and hour to be fixed by the court, why they shall not be punished for contempt of the court, in causing and procuring, as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and the Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91 in the Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then depending in this court, in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Co. et al. were defendants, upon the grounds:

1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of Mrs. Florida McGuire v. Pensacola City Co. et al. had been submitted to the court on November 5, 1901, and denied, and after the said judge had stated in open court and in the presence of the said counsel, Simeon Belden and Louis Paquet, that an allegation of the said petition that he or some member of his family were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract, because the said suit of Florida McGuire involving the title to the said tract was in litigation before him, the said judge.



2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part of the said tract and had no reason whatever to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of the said attorneys to postpone the trial of the case of *Florida McGuire v. Pensacola City Co. et al.* for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

4. That the said E. T. Davis was, before the instituting of the said suit against the said judge, cognizant of all the facts herein set forth.

W. A. BLOUNT,  
*An Attorney of this Court.*

NOVEMBER 11, 1901.

That thereupon this respondent, as presiding judge of said court, caused to be cited before the said court the said Simeon Belden, Louis P. Paquet, and E. T. Davis to respond or answer to the said charge of contempt made against them, and to purge themselves of said alleged contempt, if possible; and thereafter, to wit, on the 12th day of November, 1901, said Simeon Belden and E. T. Davis appeared in said court, pleaded to the charge of contempt preferred against them, and, issue being joined, a hearing was had upon the said charge of contempt; all the testimony offered by either party to said proceedings was heard, as well as arguments for the said persons so charged with contempt, and upon full and careful consideration of the said evidence presented and the law in the case, this respondent, as presiding judge of said court, decided that the said Simeon Belden and E. T. Davis, and each of them, were guilty as charged of a substantial contempt of the dignity and good order of the said court, and proceeded to impose a sentence upon each of them, which said sentence directed that each of said persons should pay into the court a fine of \$100 and be committed to prison for a period of 10 days.

Respondent further says that hereafter the said Simeon Belden and E. T. Davis each sued out a writ of habeas corpus, returnable before the Hon. Don. A. Pardee, United States circuit judge in and for the fifth judicial circuit, at dates therein named, and hearings upon said writs of habeas corpus were thereafter had before the said circuit judge, where each of said parties was fully heard, and upon full and careful consideration of the said issues involved in said habeas corpus proceedings the said circuit judge, on the 7th day of December, 1901, held that the said Simeon Belden and E. T. Davis had both been justly and properly adjudged guilty of contempt by this respondent as judge of the said district court of the northern district of Florida; that the said court had jurisdiction to hear said contempt proceedings; that the evidence disclosed that a contempt of court had been committed by each of the said two persons, and, among other things in said opinion, decided as follows:

"The relator is an attorney and counselor of the United States circuit court for the northern district of Florida, and as such one of the officers of the court within the intent and meaning of the above statute. As such officer, he was and is charged with conduct in and out of court which if accompanied with malicious intent or had the effect to embarrass and obstruct the administration of justice was such misbehavior as amounted to contempt of court."

\* \* \* \* \*

"It is conceded that this sentence is beyond the jurisdiction of the court, which, under section 725, above quoted, is limited to power to imprison or to fine, but not both. But the question is whether the relator can complain of this sentence until he has performed that part which the court had power to impose. The court had power to impose a sentence of imprisonment in the county jail for ten days; also had power to impose a fine of \$100. Is the relator injured until he has either suffered the imprisonment or paid the fine?"

This question has been somewhat considered in the Supreme Court. In *Ex parte Swan* (supra) the court says:

"It is further contended that the court exceeded its power, in that the payment of costs was required, because the costs were in the nature of a fine, and therefore the punishment inflicted was both fine and imprisonment. Under section 970 of the Revised Statutes, when judgment is rendered against a defendant in a prosecution for any fine or forfeiture, he shall be subject to the payment of costs, and on every



conviction for any other offense not capital the court may, in its discretion, award that the defendant shall pay the costs of the prosecution; and as contempt of court is a specific offense it is said that the judgment for payment of costs would appear to be within the power of the court, although by section 725 it is provided that contempt of the authority of courts of the United States may be punished 'by fine or imprisonment, at the discretion of the court.' But, be that as it may, the sentence here was that the petitioner be imprisoned 'until he returns to the custody of the receiver the barrel taken by him from the warehouse without warrant of law. And when that has been surrendered, that he suffer a further imprisonment thereafter in said county jail for three months and until he pay the costs of these proceedings.' As the prisoner has neither restored the goods nor suffered the imprisonment for three months, even if it was not within the power of the court to require payment of costs and its judgment to that extent exceeded its authority, yet he can not be discharged on habeas corpus until he has performed so much of the judgment or served out so much of the sentence as it was within the power of the court to impose. (*Ex parte Lange*, 18 Wall., 163; *Ex parte Parks*, 93 U. S., 18.)

\* \* \* \* \*

"Considering these authorities and that this writ is sued out and is returned before one of the judges of the circuit for the northern district of Florida, it would seem to be proper to discharge this writ, leaving the relator to elect whether he will pay the fine or suffer the imprisonment, and then to seek relief from the balance of the sentence. Another course to follow would be to adjudge the sentence imposed to be beyond the law and remand the relator to the circuit court of the northern district of Florida to be sentenced within the law for contempt, of which he has been adjudged guilty.

"The case shows that the relator has suffered some portion of the sentence of imprisonment; for this reason and under all the circumstances of the case I deem it best—and the relator can not complain—to hold that when the relator shall have satisfied either the imprisonment or fine adjudged against him he will be entitled to his discharge.

"For these reasons the writ of habeas corpus herein sued out is discharged.

"Circuit Judges McCormick and Shelby heard the argument in this case, and concur in this opinion.

"DON. A. PARDEE, *Circuit Judge*."

And thereupon the said circuit judge made an order in the premises as follows:

"United States fifth judicial circuit. Proceedings before Don. A. Pardee, circuit judge, in chambers, New Orleans, La.

"Ex parte Elsa T. Davis, ex parte Simeon Belden. On writs of habeas corpus.

"Writs of habeas corpus in favor of the above-named relators having been issued on the order of the undersigned circuit judge, returnable in chambers in the city of New Orleans, and returns having been made to the said writs, and the issue presented having been argued—

"It is now, for the reasons herein filed, ordered and adjudged that the said writs be discharged, and that the relators be remanded to the custody of the jail keeper of Escambia County, Fla., holding for the marshal for the northern district of Florida at Pensacola.

"And as the said relators, pending proceedings on above-mentioned writs, have been enlarged upon bonds conditioned upon their appearance and to obey orders issued,

"It is ordered that they surrender themselves to said jailer, or said marshal, on or before noon of Monday, the 9th day of December, 1901.

"The costs of these proceedings to be paid by said relators.

"DON. A. PARDEE, *Circuit Judge*."

"DECEMBER 7, 1901."

Whereby respondent insists and alleges that the said proceedings against the said Simeon Belden and E. T. Davis, for contempt, as aforesaid, came to an end, and a final adjudication was had therein.

Respondent admits that it was decided by the said circuit judge that this respondent, as judge of the said circuit court of the northern district of Florida, in imposing sentences upon the said Simeon Belden and E. T. Davis, was mistaken in his understanding of the law of the case in this, and in this only, to wit: That respondent believed that it was within his power and discretion as said judge to impose both a fine and sentence of imprisonment upon each of the said two persons adjudged guilty of contempt as aforesaid, whereas it was held by the said circuit judge that the statute

of the United States in that respect made and provided authorized a sentence of fine or imprisonment, and that both fine and imprisonment could not be imposed in any one case; but respondent says that whatever mistake he made in that respect was made without malice and in the belief that such a sentence could be properly imposed under the law, and respondent should not be held to have committed a high crime or misdemeanor as alleged in said article 8 by reason of the fact that he may have been mistaken in his construction of the law, whereby he imposed a sentence of both fine and imprisonment; and he not only alleges that he was free from any bias, prejudice, or desire to injure either of the said two persons, but that all his acts and doings in and about the trial of said case, the decision thereon, and the imposing of sentences therein, were prompted solely by his desire to maintain the dignity and authority of his said court and to punish such acts of contempt of its authority as tended to hinder, delay, obstruct, and impede the due administration of justice therein, and to subject the said court and the judge thereof to public criticism, contumely, and contempt.

Respondent alleges that the said United States circuit court, sitting in and for the northern district of Florida, had jurisdiction of the said contempt proceedings; that due process of law was issued therein; that the said Simeon Belden and E. T. Davis appeared in said court and were accorded every right to be heard by counsel learned in the law to present evidence and to purge themselves of said contempt if they could do so in accordance with the facts and the law of the case; and respondent alleges that they did not so purge themselves, or either of them, of said contempt.

And respondent insists that he was and is blameless in the premises; that he performed his duty, and his whole duty, in all the said proceedings; that he was in no way guilty of an abuse of judicial power or of a high misdemeanor in office, and that the said proceedings had and held before him, and the judgment resulting therefrom, were all in accordance with the law except as hereinbefore explained; and any failure of this respondent as presiding judge of the said United States district court to have adjudged said Simeon Belden and E. T. Davis guilty of contempt, and to have punished them therefor, in view of the testimony as presented and the law of the case, would have greatly tended to destroy the dignity and authority of the said court; to obstruct, hinder, and delay the due course of justice therein, and to bring said court into public disfavor and just contempt.

#### ANSWER TO ARTICLE NINE.

And the said respondent, saving to himself all advantages of exception or otherwise to article 9 of the said articles of impeachment, for answer thereto saith:

He admits that prior to the 12th day of November, A. D. 1901, he had been duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida and had entered upon the duties of his office prior to said date, and continued in the performance of the duties and in the exercise of his office of judge up to the present time, and he says that at all the times mentioned in said article 9 he was exercising and performing the duties of a district judge in and for the northern district of Florida, and that on the 12th day of November, A. D. 1901, he was holding a session of the circuit court at the city of Pensacola, in the State of Florida; and he admits that on said date he did adjudge guilty of contempt of court and impose a fine of \$100 upon, and commit to prison for a period of 10 days, one E. T. Davis, an attorney and counselor at law of said court, as set forth in said article 9; but he denies that said judicial action on his part was malicious or unlawful, and, on the contrary, he insists and asserts that said judgment was rendered and said sentence imposed by him from a high sense of judicial and public duty, and that upon the proceedings then pending and heard before him he could not have done otherwise than to have adjudged the said E. T. Davis guilty of the contempt of court stated in said article 9.

Respondent further says that all of the acts and charges as made in said article 9 are the same identical acts and charges as made in the aforesaid article 8; and he says that for a more full and complete answer to the said article 9 he hereby reiterates and reaffirms all of his allegations and statements in his answer to the said article 8, and adopts the same as his further and complete answer to said article 9, and asks that the said allegations and statements in said answer to the said eighth article shall be taken and accepted as his further and complete answer to the allegations of said article 9 as fully and with the same force and effect as if they were herein specifically reiterated and set forth, and prays equal benefit therefrom as if the same were again fully reiterated.

## ANSWER TO ARTICLE TEN.

And the respondent, saving to himself all advantages of exception or otherwise to article 10 of the said articles of impeachment, for answer thereto saith:

He admits that prior to the 12th day of November, A. D. 1901, he had been duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida, and had entered upon the duties of his office prior to said date, and continued in the performance of the duties and in the exercise of his office of judge up to the present time; and he says that at all times mentioned in said article 10 he was exercising and performing the duties of a district judge in and for the northern district of Florida; and that on the 12th day of November, A. D. 1901, he was holding a session of the circuit court at the city of Pensacola, in the State of Florida; and he admits that on said date he did adjudge guilty of contempt of court and impose a fine of \$100 upon, and commit to prison for a period of 10 days, one Simeon Belden, an attorney and counselor at law of said court, as set forth in said article 10; but he denies that said judicial action on his part was malicious or unlawful; and, on the contrary, he insists and asserts that said judgment was rendered and said sentence imposed by him from a high sense of judicial and public duty, and that upon the proceedings then pending and heard before him he could not have done otherwise than to have adjudged the said Simeon Belden guilty of the contempt of court stated in said article 10.

Respondent, further answering, says that all the allegations made in the said article 10 refer to the same proceedings in all respects as those charged in articles 8 and 9 aforesaid; that the said E. T. Davis named in said articles 8 and 9 and the said Simeon Belden named in article 10 jointly committed all of the acts and participated in all the proceedings by trial or otherwise set forth and described in respondent's answer to article 8 aforesaid, except in this, to wit, that the sentence imposed upon the said Simeon Belden was a separate sentence from the sentence imposed upon said E. T. Davis, and he says that for a more full and complete answer to said article 10 he hereby reiterates and reaffirms all of the allegations and statements in his answer to the said article 8, and adopts the same as his further and complete answer to said article 10; and asks that the said allegations and statements in said answer to the said eighth article shall be taken and accepted as his further and complete answer to the allegations of said article 10 as fully and with the same force and effect as if they were herein specifically reiterated and set forth, and prays equal benefit therefrom as if the same were here again fully reiterated.

## ANSWER TO ARTICLE ELEVEN.

And the respondent, saving to himself all advantages of exception or otherwise to article 11 of the said articles of impeachment, for answer thereto saith:

He admits that prior to the 12th day of November, A. D. 1901, he had been duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida and had entered upon the duties of his office prior to said date, and continued in the performance of the duties and in the exercise of his office of judge up to the present time; and he says that at all the times mentioned in said article 11 he was exercising and performing the duties of a district judge in and for the northern district of Florida, and that on the 12th day of November, A. D. 1901, he was holding a session of the circuit court at the city of Pensacola, in the State of Florida, and he admits that on said date he did adjudge guilty of contempt of court and impose a fine of \$100 upon and commit to prison for a period of 10 days one Simeon Belden, an attorney and counselor at law of said court, as set forth in said article 11; but he denies that said judicial action on his part was malicious or unlawful, and, on the contrary, he insists and asserts that said judgment was rendered and said sentence imposed by him from a high sense of judicial and public duty, and that upon the proceedings then pending and heard before him he could not have done otherwise than to have adjudged the said Simeon Belden guilty of the contempt of court stated in said article 11.

Respondent further answering says that all of the allegations made in the said article 11 refer to the same proceedings in all respects as those charged in articles 8, 9, and 10 aforesaid; that the said E. T. Davis, named in said articles 8 and 9, and the said Simeon Belden, named in article 11, jointly committed all of the acts and participated in all the proceedings by trial or otherwise set forth and described in respondent's answer to article 8 aforesaid, except in this, to wit, that the sentence imposed upon the said Simeon Belden was a separate sentence from the sentence imposed upon said E. T.

Davis; and he says that for a more full and complete answer to the said article 11 he hereby reiterates and reaffirms all of the allegations and statements in his answer to the said article 8, and adopts the same as his further and complete answer to article 11, and asks that the said allegations and statements in said answer to the said eighth article shall be taken and accepted as his further and complete answer to the allegations of said article 11, as fully and with the same force and effect as if they were herein specifically reiterated and set forth, and prays equal benefit therefrom as if the same were here again fully reiterated.

## ANSWER TO ARTICLE TWELVE.

And the respondent, saving to himself all advantages of exception or otherwise to article 12, of the said articles of impeachment, for answer thereto, saith:

He admits that prior to the 9th day of December, A. D. 1902, he had been duly appointed, confirmed, and commissioned as a district judge of the United States in and for the northern district of Florida, and had entered upon the duties of his office prior to said date, and continued in the performance of the duties and in the exercise of his office of judge up to the present time; and he says that at all times mentioned in said article 12 he was exercising and performing the duties of a district judge in and for the northern district of Florida; and that on the 9th day of December, A. D. 1902, he was holding a session of the said district court; and he admits that on said date he did adjudge guilty of contempt of court and commit to prison for a period of 60 days one W. C. O'Neal, as set forth in said article 12, but he denies that said judicial action on his part was malicious or unlawful, and on the contrary he insists and asserts that said judgment was rendered and said sentence imposed by him from a high sense of judicial and public duty, and that upon the proceedings then pending and heard before him he could not have done otherwise than to have adjudged the said W. C. O'Neal guilty of the contempt of court stated in said article 12.

Respondent further answering says that on the 29th day of August, 1902, one Scarritt Moreno filed in the said district court of the United States in and for the northern district of Florida his petition asking to be adjudged a bankrupt and to obtain the benefits of the acts of Congress of the United States relating to bankruptcy; and the said court, having jurisdiction in the premises, took such proceedings in relation thereto that by an order duly made the said petitioner was adjudged a bankrupt, and A. Greenhut was duly appointed trustee of the estate of the said bankrupt on the 15th day of September, 1902; that the said A. Greenhut accepted the said appointment and filed his bond as such trustee, which said bond was duly approved as provided for by law, and on said date last named the said A. Greenhut duly took the oath of office and qualified as required by law, and thereby became an officer of the district court of the United States in and for the northern district of Florida, to wit, trustee for the estate of the above-named Scarritt Moreno, bankrupt as aforesaid, and continued as such officer of said court during all the times hereinafter referred to in this answer; that on the 10th day of November, A. D. 1902, the said A. Greenhut, an officer of said court, as aforesaid, filed and presented in the said court, while said court was duly in session in the city of Pensacola, Fla., in said northern judicial district of Florida, a certain information in writing and in words and figures as follows, to wit:

"In the United States district court, northern district of Florida, at Pensacola.

"In the matter of Scarritt Moreno, bankrupt.

"UNITED STATES OF AMERICA,

"*Northern District of Florida, city of Pensacola, ss:*

"Adolph Greenhut, of the city of Pensacola, in the district aforesaid, being duly sworn according to law, on his oath, doth depose and say:

"That heretofore, on the 29th day of August, 1902, one Scarritt Moreno filed in the honorable the district court of the United States in and for the northern district of Florida, at Pensacola, his petition to be adjudicated a bankrupt and to obtain the benefits of the acts of Congress of the United States relating to bankruptcy. That thereafter such proceedings were had upon said petition in said United States district court; that on September 15, 1902, affiant was duly appointed trustee of the estate of the above-named Scarritt Moreno, bankrupt, which said appointment of deponent as trustee was then and there approved by the said court.

"That thereafter, to wit, on the day and year last aforesaid, affiant accepted said appointment and filed his bond as such trustee, which said bond was duly approved by E. K. Nichols, Esq., referee in bankruptcy, and at the same time deponent took the oath of office as required by law, and thereupon he became charged with the duties



and clothed with the authority appertaining to a trustee in bankruptcy under the laws of the United States, and from thence hitherto has occupied and is now occupying said trusteeship, amenable to and subject to the orders of the said the honorable district court of the United States in and for the northern district of Florida.

"That affiant was, by counsel, advised that it was his duty, as trustee of the estate of said Scarritt Moreno, as aforesaid, to institute a certain suit or action in equity for the purpose of having certain property purchased by the said Scarritt Moreno, bankrupt, the title to which was taken by the said Scarritt Moreno in the name of his wife, brought into the said United States district court as a part of the estate of said bankrupt, to be there administered as required by law, and for the further purpose of having certain mortgages on said property decreed and declared to be null, void, and of no effect. That thereupon, in the afternoon of Saturday, the 18th day of October, 1902, through his counsel, he, as trustee as aforesaid, and in the performance of his duty as aforesaid as an officer of the said United States district court, caused to be filed in the circuit court of Escambia County, State of Florida, his certain bill of complaint, therein and thereby, among other things, seeking the relief above referred to.

"That by the advice of his counsel Scarritt Moreno, Susie R. Moreno, his wife, the American National Bank of Pensacola, the Citizen's National Bank of Pensacola, and others, were made parties defendant in and to said bill of complaint, and that upon the filing of said bill of complaint suit was commenced against the defendants named in said bill of complaint. That all of the proceedings above referred to were taken and had by affiant as an officer of the district court of the United States in and for the northern district of Florida, and in the due, proper, and faithful performance of his duty as such officer, and were necessarily had and taken under the law and his oath of office.

"That on Monday, the 20th day of October, A. D. 1902, between the hours of 9 and 10 o'clock a. m., affiant was standing in the door of the office of the store owned and conducted by him, situated at No. —, East Government Street, in the city of Pensacola, aforesaid, which said office was occupied by deponent, among other things, for the purpose of performing the duties devolving upon him as trustee as aforesaid, and in which said office this deponent kept and had the custody of the papers, books, etc., relating to and connected with the estate of said Scarritt Moreno, bankrupt, in deponent's hands as trustee, as aforesaid. That at the said time deponent was engaged in conversation with one Alex. Lischkoff, when one W. C. O'Neal, who was at the said time president of said American National Bank, of Pensacola, one of the defendants in the action or suit heretofore referred to, approached to where affiant was standing and conversing, as aforesaid, and stated to affiant that as soon as he, affiant, was at liberty, he, said O'Neal, desired to speak to him; thereupon affiant stated in effect that said O'Neal could speak to him then, and affiant entered his said office and stood alongside of a standing desk about 5 feet from the door of said office.

"Said O'Neal followed affiant into said office, stood opposite to affiant, and distant only a few feet. That thereupon said O'Neal, in effect, asked this affiant why he, affiant, had brought the name of his, the American National Bank, into the Moreno suit (meaning thereby the suit above referred to, brought by affiant as trustee, against Scarritt Moreno and others); that affiant replied that he, O'Neal, could see his, affiant's attorneys in relation thereto; that said O'Neal made some remark to the effect that he would not do so, and stated to affiant that he, affiant, was no gentleman; that affiant thereupon said that he, affiant, was as much of a gentleman as he, the said O'Neal, was; that thereupon said O'Neal said, 'We'll settle the matter,' and turned about as if he intended to leave the premises of deponent, walking toward the door of said office and out upon the sidewalk.

"That affiant had no thought, idea, or suspicion that said O'Neal intended any personal violence toward him, and quietly started forward from where he was so standing as aforesaid, toward the door of said office leading into the street. That affiant barely reached the doorway of said office when said O'Neal, without any provocation, without any notice to deponent of his murderous intention, turned and wheeled suddenly about with his knife in his hand, and with intent to kill and murder deponent struck at his, deponent's, throat with said knife, and cut deponent at a point behind the left ear, cutting through lower portion of said left ear, then across the left cheek, ending at left corner of mouth, and immediately thereafter said O'Neal cut and stabbed deponent four further times: (1) On left side over ribs, (2) upon left hip, (3) on left elbow, and (4) on right hand. That the cuts, wounds, and stabs so inflicted by said O'Neal upon deponent were of a serious and dangerous character, and from said time to the present deponent has been unable to attend to and perform his duties as trustee as aforesaid, and has been confined to his home, except for a few hours on two or three different days: and has ever since been, and is now, under the care and treatment of a physician, who is attending to said wounds.



"That said assault and attempt to murder was committed by said O'Neal as aforesaid, solely because and for the reason that affiant, as an officer of the United States district court in and for the northern district of Florida, had instituted the suit above set forth against the said American National Bank and others, and to interfere with and prevent deponent from executing and performing his duties as such officer of said court, and the said O'Neal did by the said murderous assault interfere with the management of said trust by deponent as an officer of the said court, and did for a long period of time, to wit, from the said 20th day of October, 1902, up to the present time, by reason of the injuries inflicted by him upon deponent as aforesaid, prevent and deter deponent from performing the duties incumbent upon him, deponent, as such officer, and did thereby interfere with the management by deponent, as such officer, of the estate of the said Scarritt Moreno, bankrupt.

"A. GREENHUT.

"Sworn to and subscribed before me this 7th day of November, A. D. 1902.

"E. K. NICHOLS,  
"Referee in Bankruptcy."

And the said court, and respondent, as judge of said court, then and there, by virtue of the filing and presentation of said complaint, having jurisdiction in the premises, caused the said W. C. O'Neal to be cited to appear before the said court to answer to the charge of contempt as set forth and exhibited to the court in said information.

Respondent says that thereafter, and upon the 17th day of November, A. D. 1902, the said W. C. O'Neal appeared in the said court, the same being then and there in session, and thereafter and from time to time due proceedings were had in said court, which resulted in a trial of the charges made and set forth in the said information; that the said W. C. O'Neal filed his answer in said cause: that he was heard on all questions arising in the case by counsel learned in the law, and on the 8th day of December, 1903, issue having been fully joined, the court proceeded to hear and try the said case upon the said charges of contempt so preferred against the said W. C. O'Neal; that evidence was offered and received in support of the facts as alleged in the said information, and evidence was also offered and received for and on behalf of the said W. C. O'Neal; and after the hearing of all testimony offered upon both sides, and after hearing arguments of counsel for the said W. C. O'Neal, respondent, as the presiding judge of said court, held and found the said W. C. O'Neal guilty of contempt as charged, and entered against him the following order and judgment, to wit:

"And afterwards, to wit, on the 9th day of December, A. D. 1902, the following proceedings were had in open court, to wit:

"In the matter of the rule upon W. C. O'Neal to show cause why he should not be punished for contempt of this court as to the matters and things set forth in the affidavit of Adolph Greenhut.

"This cause coming on to be heard at this time on the affidavit of Adolph Greenhut in the matter of the bankruptcy proceedings in the estate of Scarritt Moreno, and upon the rule to show cause why he should not be punished for contempt of this court, issued thereon by this court, against W. C. O'Neal, and upon the answer of the said respondent, W. C. O'Neal, to the said rule and affidavit; and the court having heard the testimony and the witnesses for the prosecution and for the respondent, and after argument of counsel and consideration by the court, and the court being advised in the premises, the court doth find as follows:

"That the affidavit of Adolph Greenhut, upon which this rule was granted, is true and that the respondent is guilty of the acts and things set forth therein, in the manner and form therein alleged, and that the same constitute and are a substantial contempt of this court, and it is therefore

"Ordered, adjudged, and directed, That the said respondent, W. C. O'Neal, be taken hence to the county jail of Escambia County, at Pensacola, in the State of Florida, and there confined for and during the period of 60 days, and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due process of law.

"And the said respondent, W. C. O'Neal, at this time having sued out his writ of error to the Supreme Court of the United States, and made and entered into a bond and undertaking, conditioned as required by law and duly approved by this court, it is therefore ordered that the said writ of error be and operate as supersedeas to the judgment heretofore rendered in this cause."

Respondent here alleges and says that all of the facts and allegations contained in the said information filed and presented in said court by the said A. Greenhut, and so found and adjudged to be true by this respondent, as the presiding judge of said court,

upon the said trial, were and are true in all respects as set forth in the said information of said A. Greenhut; and respondent herein refers to the allegations contained in said information hereinbefore fully set forth and adopts each and every of said allegations as a part of his answer herein, and hereby alleges that each and every of the facts set forth in the said information were and are true; and he asks that the same be taken as a part of his answer herein as fully and to the same effect as if the same were herein specifically reiterated and charged.

Respondent further says that thereafter the said W. C. O'Neal sued out a writ of error to the Supreme Court of the United States, and thereafter perfected the same by filing in the said Supreme Court a transcript of the record of the said case and of the proceedings had therein in the said district court; and thereafter such proceedings were had and taken in the Supreme Court of the United States that on the 1st day of June, 1903, the said writ of error was dismissed by the said court for want of jurisdiction.

Respondent, further answering, says that thereafter, to wit, on the 12th day of June, 1903, the said W. C. O'Neal, having been apprehended and imprisoned in the county jail of Escambia County, at Pensacola, Fla., in pursuance of the judgment and sentence of the said United States court sitting in and for the northern district of Florida, sued out and prosecuted before the Hon. Don A. Pardee, United States circuit judge in and for the fifth judicial circuit, a writ of habeas corpus; and thereafter such proceedings were had thereunder before the said circuit judge that on the 10th day of November, A. D. 1903, said judge entered judgment and made an order discharging said writ of habeas corpus, which said judgment and order, together with the reasons stated by the court therefor, is in words and figures as following, to wit:

“United States circuit court, fifth judicial circuit, northern district of Florida. Ex parte W. C. O'Neal. Habeas corpus.

“The petitioner, W. C. O'Neal, was convicted in the district court for the northern district of Florida on a charge of contempt of court in committing an assault upon an officer of said court, and thereupon was sentenced to imprisonment in the county jail at Pensacola, Fla., for a term of 60 days. This conviction was immediately followed by a writ of error to the Supreme Court of the United States based on a certified question as to jurisdiction. In dismissing the writ of error the Supreme Court said:

“‘Jurisdiction over the person and jurisdiction over the subject matter of contempt were not challenged. The charge was the commission of an assault on an officer of the court for the purpose of preventing the discharge of his duties as such officer, and the contention was that on the facts no case of contempt was made out.

“‘In other words, the contention was addressed to the merits of the case and not to the jurisdiction of the court. An erroneous conclusion in that regard can only be reviewed on appeal of error, or in such appropriate way as may be provided. Louisville Trust Company v. Cominger (184 U. S., 18, 26); Ex parte Gordon (104 U. S., 515).

“‘And while proceedings in contempt may be said to be sui generis, the present judgment is in effect a judgment in a criminal case over which this court has no jurisdiction in error (sec. 5, act of Mar. 3, 1891, 26 Stat., 826, c. 517, as amended by the act of Jan. 20, 1897, 29 Stat., 492, c. 68); Chetwood's case (165 U. S., 445, 462); Tinsley v. Anderson (171 U. S., 101, 105); Cary Manufacturing Co. v. Acme Flexible Clasp Co. (187 U. S., 427, 428; 190 U. S., 37, 38).’

“The case is here presented upon the record proper as submitted to the Supreme Court and upon further showing of alleged facts, which petitioner claims do not contradict the record, to wit:

“That the place at which took place on the morning of October 20, 1902, the affray between A. Greenhut and petitioner, in which is alleged to have occurred the assault by petitioner upon the said A. Greenhut, for which the district court has sentenced petitioner as for a contempt, was the office in the store of the said A. Greenhut and was a part of the building occupied by him for the purpose of conducting the said grocery business, and was used in connection with his position as trustee only because it was his place of business and therefore more convenient for him. That the said building was at said time, and is now, No. 104 East Government Street, in the city of Pensacola, and distant from the United States court room and the building in which it was and is held not less than 400 feet, and separated therefrom by an intervening street and intervening alley and by more than a block of brick business houses, and was not in any way connected with or used in connection with the said court or courthouse or any of the functions or duties of the said court or of the judge thereof. That the said district court was not in session in the city of Pensacola on the said 20th day of October, nor had been for months before the said date, and that no session thereof occurred thereafter until November 7, 1902, and that the judge of said court was not

on the date in said State nor had been therein for months prior thereto, nor did he come therein until the 6th day of November, A. D. 1902.

"As to claimed authority to supplement record as to facts see *In re Cuddy* (131 U. S., 280).

"In my opinion the additional facts offered to supplement the record do not materially change the status of the case nor do they in any wise extend the jurisdiction of this court upon this writ.

"The charge of contempt against the relator is based upon the fact that he unlawfully assaulted and resisted an officer of the district court in the execution of orders of the court and in the performance of the duties of his office under such orders, and in that respect it would seem to be immaterial whether the place of resistance was 40 or 400 feet from the actual place where the court was usually held, so long as it was not in the actual presence of the court nor so near thereto as to embarrass the administration of justice.

"Under the bankruptcy act of 1898, section 2, the district courts of the United States, sitting in bankruptcy, are continuously open; and under section 33 and others of the same act a trustee in bankruptcy is an officer of the court. The questions before the district court in the contempt proceedings were whether or not an assault upon an officer of the court, to wit, a trustee in bankruptcy for and on account of and in resistance of the performance of the duties of such trustee, had been committed by the relator, and if so, was it under the facts proven a contempt of the court whose officer the trustee was.

"Unquestionably the district court had jurisdiction summarily to try and determine these questions, and having such jurisdiction, said court was fully authorized to hear and decide and adjudge upon the merits. (*In re Savin*, 131 U. S., 267, 276, 277.)

"This brings us squarely to the question whether upon this writ of habeas corpus the inquiry can be extended by this court so as to review, as upon writ of error, any irregularities of the district court in the proceedings or to determine, as upon appeal, the real merits of the case.

"I have examined with care the decisions of the Supreme Court of the United States in *In re Cuddy* (131 U. S., 280), *Ex parte Mayfield* (141 U. S., 116), and *In re Sachs & Watts* (190 U. S., 1), and in many other cases, and do not find that either or any of them control or determine the question in favor of such claimed jurisdiction.

"Whatever an appellate court may have power to do in regard to supplementing the record, as held in *In re Cuddy* and in *Ex parte Mayfield*, or upon certiorari and habeas corpus to examine the merits of the case, as in *In re Sachs & Watts*, I am forced to follow, as I did in *Ex parte Davis* (112 F. R., 139), the Supreme Court in *United States v. Pridgeon* (153 U. S., 48, 62), wherein it is declared: 'Under a writ of habeas corpus the inquiry is addressed, not to errors, but to the question whether the proceedings and the judgment rendered therein are for any reason nullities; and, unless it is affirmatively shown that the judgment or sentence under which the petitioner is confined is void, he is not entitled to his discharge.'

"This court has no appellate jurisdiction over the district court for this district, and if it should attempt to go beyond the rule declared in *United States v. Pridgeon*, and assume authority to look into the merits wherein judgments have been rendered in the district court in contempt cases, it would be, from my standpoint, an unwarranted assumption of jurisdiction, decidedly tending to scandal in judicial proceedings.

"In dealing with the proceedings against petitioner in the district court, the Supreme Court said that an erroneous conclusion in regard to the merits can only be reviewed on appeal or error, and in such appropriate way as may be provided. As shown above, the writ of habeas corpus is not an appropriate way provided.

"The Supreme Court further said that the judgment in this present case is in effect a judgment in a criminal case, in which that court had no jurisdiction on error. The court did not say that no other appellate court had jurisdiction on error.

"In *In re Paquet* (114 F. R., 437) the circuit court of appeals in this circuit held that that court had no jurisdiction to issue a writ of prohibition in a certain contempt case when pending in the circuit court of the northern district of Florida, but intimated that possibly a writ of error might lie in such cases where final judgment of conviction had been rendered; but whether the petitioner here has or had a remedy by writ of error from or by appeal to any appellate court is immaterial on this inquiry, and I am satisfied that this court has no jurisdiction to review the petitioner's case by any remedy provided by law.

"The writ of habeas corpus is discharged.

"Circuit Judges McCormick and Shelby sat with me and heard argument in this case, and they concur in this opinion.

"DON. A. PARDEE, *Circuit Judge*.

"NOVEMBER 10, 1903."

Whereby respondent insists and alleges that the said proceedings against the said W. C. O'Neal for the contempt as aforesaid came to an end, and a final adjudication was had therein.

Respondent alleges that the said United States district court, sitting in and for the northern district of Florida, had jurisdiction of the said contempt proceedings; that due process of law was issued therein, and that the said W. C. O'Neal appeared in said court and was accorded every right to be heard by counsel learned in the law, to plead, to present evidence, and to purge himself of said contempt if he could do so in accordance with the facts and the law of the case; and he says that the said W. C. O'Neal did not purge himself of said contempt.

And respondent insists that he was and is blameless in the premises; that he performed his duty, and his whole duty, in all the said proceedings; that he was entirely free from any bias, prejudice, or desire to injure said W. C. O'Neal; that all his acts and doings in and about the trial of said case, the rulings made therein, the decision thereof, and the imposing of sentence therein were prompted solely by his desire to maintain the dignity and authority of the said district court of the United States, and to punish such acts of contempt of its authority as tended to hinder, delay, obstruct, and impede the due administration of justice therein, and to subject the said court and the judge and officers thereof to public criticism, contumely, and contempt; and he alleges that the sentence imposed upon said W. C. O'Neal, in view of the gravity of the contempt committed, was reasonable, and that in fact this respondent exercised great leniency in fixing the punishment of the said W. C. O'Neal.

Respondent further alleges that in all the said proceedings he was in no way guilty of an abuse of judicial power or of a high misdemeanor, and that the said proceedings had and held before him and the judgment resulting therefrom were all in accordance with the law and the facts of the case, and any failure of this respondent as presiding judge of the United States district court to have adjudged the said W. C. O'Neal guilty of a contempt and to have punished him therefor, in view of the enormity of the offense, as shown by the testimony, would have greatly tended to destroy the dignity and authority of the said court, to intimidate the officers of said court in the performance of their duties as such, and to obstruct, hinder, and delay the due course of justice therein, and to bring said court and its officers into public disfavor and just contempt.

And this respondent, in submitting to this honorable court, this, his answer to the articles of impeachment exhibited against him, respectfully reserves leave to amend and add to the same from time to time, as may become necessary or proper and when said necessity and propriety shall appear.

CHAS. SWAYNE.

ANTHONY HIGGINS,  
JOHN M. THURSTON,  
*Of Counsel for Respondent.*

At the conclusion of the reading of the answer to the first article, Mr. Thurston said:

Mr. President, we have attached as exhibits to this answer to the first article three certificates, one from the fifth, one from the seventh, and one from the ninth judicial circuits of the United States, which show that, almost without exception, the amount of \$10 per diem was drawn by each and all of the judges, both of the circuit and district courts of those circuits, in their attendance outside of their districts, under the provisions of these laws. We have been unable up to the present time to secure from the Secretary of the Treasury the additional certificates for the other districts.

After concluding the reading of the entire answer of the respondent, Mr. Thurston said:

Now, Mr. President, referring to the fact that certain exhibits which we desired to attach to our answer to article No. 1 had not been attached because of the fact that the Secretary of the Treasury in the short space of time has been unable to furnish it to us, we move as follows:

"Counsel for respondent move an order giving them leave to hereafter attach to the answer herein to article 1, as exhibits, additional copies of certificates of the Secretary of the Treasury, showing the amounts certified to and received from the United States by the judges of the first, second, third, fourth, sixth, and eighth judicial circuits, as their reasonable expenses for travel and attendance while holding court away from the places of their residences, and outside of their respective districts, in the year 1903, it having been impossible for the Secretary of the Treasury to prepare and furnish the same to respondent up to the present time."



Mr. Manager PALMER. Mr. President, I think there ought to be some length of time stated in this order. Of course, we do not admit that these matters are at all material, but we do not object to their being filed if it is done within some reasonable length of time.

Mr. HIGGINS. Mr. President, I will state that I had heard from the Secretary of the Treasury that these certificates were prepared. We hope to have them from the Secretary before the end of the week. They are substantially in the same form and terms, though, of course, with different facts—*mutatis mutandis*—as those certificates already filed with the answer.

Mr. Manager PALMER. Before counsel for the respondent asked for an order that they may have until next Monday to file these additional exhibits I was going to ask for an order that we have until next Monday to reply. Will that suit counsel?

Mr. HIGGINS. How is that? I did not understand the manager.

Mr. FAIRBANKS. Mr. President, I propose the order, which I send to the desk, upon the motion of the counsel for the respondent with reference to the exhibits.

Mr. BACON. I would suggest to the Senator from Indiana that under the order adopted this morning it is competent for the managers to directly ask the order without its being proposed by a Senator.

The PRESIDING OFFICER. The Chair understands that an order is moved by counsel for respondent and the order is in writing. Will the counsel present it to the Secretary?

Mr. THURSTON. Mr. President, the motion was in writing. We had inferred that the order would be proposed by some member of the court.

The PRESIDING OFFICER. The Secretary will read the motion.

The Secretary read as follows:

Counsel for respondent move an order giving them leave to hereafter attach to the answer herein to article 1, as exhibits, additional copies of certificates of the Secretary of the Treasury showing the amounts certified to and received from the United States by the judges of the first, second, third, fourth, sixth, and eighth judicial circuits as their reasonable expenses for travel and attendance while holding court away from the places of their residences, and outside of their respective districts, in the year 1903, it having been impossible for the Secretary of the Treasury to prepare and furnish the same to respondent up to the present time.

The PRESIDING OFFICER. The Chair understands that this being a motion for an order, the Senator from Indiana [Mr. Fairbanks] proposes the order which will now be read by the Secretary.

The Secretary read as follows:

*Ordered*, That the respondent, Charles Swayne, have leave to hereafter, not later than the 10th instant, attach as further exhibits to his answer to article 1 of the articles of impeachment copies of the certificates of the Secretary of the Treasury, referred to in said answer, showing the amounts certified to and received from the United States by the judges of the first, second, third, fourth, sixth, and eighth judicial circuits as their reasonable expenses for travel and attendance while holding court away from the place of their residence, and outside of their respective districts, in the year 1903.

Mr. BAILEY. Mr. President, as a matter of good practice—and I presume we are to conduct this trial according to good practice—it seems to me that this is a request for time in which to exhibit evidence as a part of the pleadings. If this matter is admissible before this court at all, it is admissible as evidence. It does not occur to me as an appropriate proceeding to be giving time in which counsel for



the respondent may file evidence with their pleadings. That is as I look at it. If it were desirable to give the counsel time to prepare new allegations I should not object to an order for that; but I do object to having this court put into the attitude of expressly and by order providing for delay in producing as a part of the pleadings what properly, as it seems to me, belongs only to the production of evidence.

The PRESIDING OFFICER. The Chair will state the question. Counsel for the respondent move for an order permitting certain facts to be obtained from the Secretary of the Treasury to be hereafter attached to their answer. That is the question before the Senate.

Mr. Manager PALMER. Mr. President, is it in order for the managers to oppose that motion?

The PRESIDING OFFICER. The managers undoubtedly have a right to be heard upon the motion made by the counsel for the respondent.

Mr. Manager PALMER. If, as suggested by the Senator from Texas [Mr. Bailey], it is true that these exhibits are to be considered as evidence, then certainly they ought to be attached before the managers are asked to reply. We had expected to ask until next Monday to reply or to demur or to except to this answer, and the answer ought to be complete before we are asked to reply to it. If this time is postponed until the 10th of February our answer will have been in, and if these matters are matters of evidence it might be quite a serious consideration. Therefore we object to the extension of the time until the 10th of February.

Mr. THURSTON. Mr. President, the respondent and his counsel are so anxious to interpose no obstruction to the speedy trial of this case that if, as suggested, our motion would be taken as a ground for asking delay we here and now withdraw it.

The PRESIDING OFFICER. The motion is withdrawn, and the Chair supposes the order proposed by the Senator from Indiana is also withdrawn.

Mr. FAIRBANKS. Yes; the order is withdrawn.

Mr. Manager PALMER. Mr. President, I ask that the order I send to the desk may be made.

The PRESIDING OFFICER. The managers on the part of the House request the adoption of the order which will be read by the Secretary.

The Secretary read as follows:

*Ordered*, That the managers have time until Monday next, at 2 p. m., to consult the House of Representatives on the subject of filing exceptions, demurrer, or replication to the answer of the respondent, and that they be furnished with a copy of the said answer.

Mr. FORAKER. I did not understand from the reading of the request that it was proposed by the managers that on the date named they would file such other pleadings as they may propose to file. I think before we vote upon the order it should be understood.

The PRESIDING OFFICER. The Secretary will again read the proposed order.

The Secretary again read the proposed order.

Mr. FAIRBANKS. I offer the order which I send to the desk as a substitute for that which has just been read.

The PRESIDING OFFICER. The managers on the part of the House having requested an order in the form which was read by the Secre-

tary, the Senator from Indiana offers an order relating to the same subject matter, which will be read by the Secretary.

The Secretary read as follows:

*Ordered*, That the managers on the part of the House be allowed until the 6th day of February instant, at 1 o'clock in the afternoon, to present the replication, if any, of the House of Representatives to the answer of the respondent. That any subsequent pleadings, either on the part of the managers or of the respondent, shall be filed with the Secretary of the Senate, of which notice shall be given to the House of Representatives and the respondent, respectively, so that all pleadings shall be closed on or before the 9th day of February instant, and that the trial shall proceed on the 10th day of February instant, at 1 o'clock p. m.

Mr. Manager Palmer rose.

The PRESIDING OFFICER. Do the managers desire to be heard with reference to the proposed order?

Mr. Manager PALMER. Yes, sir. We will have to object to the order proposed as a substitute for the one submitted by the managers, because it will cut the managers off with the privilege of filing a replication only. We may desire to file a demurrer or an exception, or some kind of pleading other than a replication. Under this order we are to file by the 6th of February, as I understand, a replication, and that is to end the pleadings so far as the managers are concerned, except that they may file something afterwards with the Secretary. We should like to have the order amended so that it will cover any kind of pleadings that we may desire to file.

Mr. FAIRBANKS. I will amend the order by making it read "replication or other pleading," striking out the words "if any" and inserting "or other pleading."

The PRESIDING OFFICER. The Secretary will read the proposed order as modified by the Senator from Indiana.

The order as modified was read, as follows:

*Ordered*, That the managers on the part of the House be allowed until the 6th day of February instant, at 1 o'clock in the afternoon, to present the replication or other pleading of the House of Representatives to the answer of the respondent. That any subsequent pleadings, either on the part of the managers or of the respondent, shall be filed with the Secretary of the Senate, of which notice shall be given to the House of Representatives and the respondent, respectively, so that all pleadings shall be closed on or before the 9th day of February instant, and that the trial shall proceed on the 10th day of February instant, at 1 o'clock p. m.

Mr. FAIRBANKS. If the word "the" precedes "replication," it should be stricken out and the word "a" inserted; so that it will read "a replication or any other pleading."

Mr. FORAKER. Yes; the article "a" should be inserted for "the"; so as to read "a replication."

The PRESIDING OFFICER. The order will be so modified. Is there objection to the order as modified?

Mr. PETTUS. I am not very familiar with the forms of this proceeding; but the latter part of that order, it seems to me, will embarrass the managers as well as counsel for the respondent. Pleadings go by succession, one after the other; one has to be disposed of before it is proper to file another. Filing pleadings with the Secretary in no way disposes of them, and it seems to me the counsel and the managers will both be embarrassed by not having one pleading removed out of the way by a demurrer or by some other form of pleading before another is submitted. The filing of a pleading with the Secretary will be of no benefit in removing it out of the way.

The PRESIDING OFFICER. The Chair finds that in the Belknap impeachment trial the following resolution was passed by the Senate:

*Ordered*, That the respondent file his rejoinder with the Secretary on or before the 24th day of April instant, who shall deliver a copy thereof to the Clerk of the House of Representatives, and that the House of Representatives file their surrejoinder, if any, on or before the 25th day of April instant, a copy of which shall be delivered by the Secretary to the counsel for the respondent.

*Ordered*, That the trial proceed on the 27th day of April instant, at 12 o'clock and 30 minutes afternoon.

The proposed order is as follows:

*Ordered*, That the managers on the part of the House be allowed until the 6th day of February instant, at 1 o'clock in the afternoon, to present a replication, or other pleading, of the House of Representatives to the answer of the respondent. That any subsequent pleadings, either on the part of the managers or of the respondent, shall be filed with the Secretary of the Senate, of which notice shall be given to the House of Representatives and the respondent, respectively, so that all pleadings shall be closed on or before the 9th day of February instant, and that the trial shall proceed on the 10th day of February instant, at 1 o'clock p. m.

The Presiding Officer thinks the proposed order does not differ in any essential particular from the precedent established in the Belknap case.

Mr. Manager PALMER. I should be glad if the order could be changed so as to fix the hour at 2 o'clock on the 6th of February, instead of at 1 o'clock. The House meets at 12 o'clock, and it might be that some question would arise as to the form of the replication or demurrer or whatever we choose to file. It might lead to discussion, and we might not be prepared to come to the Senate by 1 o'clock.

The PRESIDING OFFICER. Will the Senator from Indiana modify his order?

Mr. FAIRBANKS. I will modify the order by inserting "2 o'clock" instead of "1 o'clock."

The PRESIDING OFFICER. The modification is made. The question is on agreeing to the order as modified.

The order as modified was agreed to.

Mr. Manager PALMER. Mr. President, I ask that the order I send to the desk be made.

The PRESIDING OFFICER. The managers on the part of the House request an order, which will be read.

The order was read, and agreed to, as follows:

*Ordered*, That the Secretary of the Senate communicate to the House of Representatives an attested copy of the answer of Charles Swayne, judge of the United States in and for the northern district of Florida, to the articles of impeachment, and also a copy of the foregoing order.

Mr. SPOONER. I ask for the adoption of the order I send to the desk.

The PRESIDING OFFICER. The Senator from Wisconsin asks for the adoption of an order which will be read.

The Secretary read as follows:

*Ordered*, That the answer of the respondent, Charles Swayne, to the articles of impeachment exhibited against him by the House of Representatives be printed for the use of the Senate sitting in the trial of said impeachment

Mr. BACON. I suggest that possibly the order might be enlarged to advantage so as to include not only the answer, but such further pleadings as may hereafter be filed under the order just adopted.

Mr. SPOONER. I have no objection to that.

Mr. BACON. I suggest that the Senator enlarge his order to that effect.

The PRESIDING OFFICER. The Chair suggests that it might be a little difficult to modify the order so as to apply to all subsequent pleadings filed by the managers on the part of the House and the counsel, respectively.

Mr. SPOONER. We want this at once, and we can get the other later.

Mr. BACON. Very well, Mr. President.

Mr. Manager PALMER. Mr. President, allow me to suggest that the articles of impeachment as printed in the Record are incomplete. There are five of the articles which are not in the Record at all, and some time I suppose they ought to be printed in the form of a public document to accompany the answer and other pleadings.

The PRESIDING OFFICER. The Presiding Officer will state that the order offered by the Senator from Wisconsin, unless objected to, is agreed to.

With regard to the articles of impeachment as they appear in the Congressional Record, only six of the articles—the first six, I believe—are printed in the Record. The failure to print in full the articles of impeachment was due to an accident, the Chair thinks, and is scarcely the fault either of the Official Reporters or of the Printing Office. But, between the two, the copy for the remaining articles was not at hand. The Chair understands that in the permanent Record the full articles have been or will be printed.

The managers on the part of the House suggest that the articles of impeachment be printed as a document.

Mr. Manager PALMER. With the answer.

The PRESIDING OFFICER. With the answer. If there is no objection, that order will be made.

Mr. FAIRBANKS. I move that the Senate sitting as a court of impeachment adjourn until Monday, the 6th instant, at 2 o'clock p. m. The motion was agreed to; and (at 2 o'clock and 50 minutes p. m.) the Senate sitting as a court of impeachment adjourned until Monday, February 6, 1905, at 2 o'clock p. m.

The managers on the part of the House and the counsel for the respondent retired from the Chamber.

The President pro tempore resumed the chair.

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### HOUSE OF REPRESENTATIVES, *February 6, 1905.*

[Congressional Record, volume 39, part 2, page 1939.]

Mr. PALMER. Mr. Speaker, in the matter of the impeachment of Judge Charles Swayne the managers on the part of the House have considered the answer filed by the respondent, a certified copy of which has been furnished them, and move that the House adopt the following replication, which I send to the clerk's desk to be read.

The clerk read as follows:

Replication by the House of Representatives of the United States of America to the answer of Charles Swayne, judge of the United States in and for the northern district of Florida, to the articles of impeachment exhibited against him by the House of Representatives.

The House of Representatives of the United States have considered the several answers of Charles Swayne, district judge of the United States in and for the northern district of Florida, to the several articles of impeachment against him by them exhibited in the name of themselves and of all the people of the United States, and reserving to themselves all advantage of exception to the insufficiency, irrelevancy, and impertinency of his answer to each and all of the several answers of impeachment exhibited against the said Charles Swayne, judge as aforesaid, do deny each and every averment in said several answers, or either of them, which denies or traverses the acts, intents, crimes, or misdemeanors charged against said Charles Swayne in said articles of impeachment, or either of them; and for replication to said answer do say that said Charles Swayne, district judge of the United States in and for the northern district of Florida, is guilty of the high crimes and misdemeanors mentioned in said articles, and that the House of Representatives are ready to prove the same.

Mr. PALMER. Mr. Speaker, I move the adoption of the replication.

The SPEAKER. The question is on agreeing to the replication.

The replication was agreed to.

Mr. PALMER. Now, Mr. Speaker, I move the adoption of the following resolution.

The Clerk read as follows:

[H. Res. 486.]

*Resolved*, That a message be sent to the Senate by the Clerk of the House informing the Senate that the House of Representatives has adopted a replication to the answer of Charles Swayne, judge of the northern district of Florida, to the articles of impeachment exhibited against him and that the same will be presented to the Senate by the managers on the part of the House.

And, also, that the managers have authority to file with the Secretary of the Senate on the part of the House, any subsequent pleadings they shall deem necessary.

The SPEAKER. The question is on agreeing to the resolution.

The resolution was agreed to.

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### SENATE, *February 6, 1905.*

[Congressional Record, volume 39, part 2, page 1922.]

The PRESIDENT pro tempore (at 2 o'clock p. m.). The hour of 2 o'clock, to which the Senate sitting as a court of impeachment adjourned, has arrived. The Senator from Connecticut will please take the chair.

Mr. Platt of Connecticut assumed the chair.

The PRESIDING OFFICER (Mr. Platt of Connecticut). The Senate is now in session for the trial of articles of impeachment presented by the House of Representatives against Charles Swayne. The Sergeant at Arms will make proclamation.

The Sergeant at Arms made the usual proclamation.

The PRESIDING OFFICER. If the managers on the part of the House are in attendance, the Sergeant at Arms will notify them.

At 2 o'clock and 2 minutes p. m. the managers on the part of the House of Representatives (with the exception of Mr. OLMSTED) appeared, and they were conducted to the seats assigned them.

Mr. Higgins and Mr. Thurston, counsel for respondent, entered the Chamber and took the seats assigned them.



The PRESIDING OFFICER. The Journal of the Senate sitting in the impeachment trial will be read.

The Secretary read the Journal of the proceedings of the Senate sitting for the trial of the impeachment of Charles Swayne of Friday, February 3, 1905.

The presiding officer laid before the Senate the following resolution from the House of Representatives, which was read:

Fifty-eighth Congress, third session. Congress of the United States. In the House of Representatives.

FEBRUARY 6, 1905.

*Resolved*, That a message be sent to the Senate by the Clerk of the House informing the Senate that the House of Representatives has adopted a replication to the answer of Charles Swayne, judge of the northern district of Florida, to the articles of impeachment exhibited against him and that the same will be presented to the Senate by the managers on the part of the House; and also that the managers have authority to file with the Secretary of the Senate, on the part of the House, any subsequent pleadings they shall deem necessary.

Attest:

A. McDOWELL, *Clerk*.

The PRESIDING OFFICER. Have the managers on the part of the House anything to present?

Mr. Manager PALMER. I offer the replication which was adopted by the House, as stated in the resolution which has just been read. It is as follows:

Replication by the House of Representatives of the United States of America to the answer of Charles Swayne, judge of the United States in and for the northern district of Florida, to the articles of impeachment exhibited against him by the House of Representatives.

The House of Representatives of the United States have considered the several answers of Charles Swayne, district judge of the United States in and for the northern district of Florida, to the several articles of impeachment against him by them exhibited in the name of themselves and of all the people of the United States, and reserving to themselves all advantage of exception to the insufficiency, irrelevancy, and impertinency of his answer to each and all of the several articles of impeachment exhibited against the said Charles Swayne, judge, as aforesaid, do deny each and every averment in said several answers or either of them, which denies or traverses the acts, intents, crimes, or misdemeanors charged against said Charles Swayne in said articles of impeachment or either of them and for replication to said answer do say that said Charles Swayne, district judge of the United States in and for the northern district of Florida, is guilty of the high crimes and misdemeanors mentioned in said articles, and that the House of Representatives are ready to prove the same.

J. G. CANNON,

*Speaker of the House of Representatives.*

A. McDOWELL,

*Clerk of the House of Representatives.*

The replication was handed to the Secretary.

The PRESIDING OFFICER. The replication will be printed. Have the managers anything further to offer?

Mr. Manager PALMER. Nothing to offer to-day, sir.

The PRESIDING OFFICER. Have counsel for the respondent anything to offer?

Mr. HIGGINS. Should we be advised there is anything further to offer we assume it can be done without a formal meeting of the Senate. It would be merely to join issue, in technical phrase.

The PRESIDING OFFICER. It may, under the order which has already been adopted, be filed with the Secretary.

Mr. BACON. Mr. President, I ask for the adoption of the following order relative to the adjournment of the Senate sitting as a court.

The PRESIDING OFFICER. The order will be read.

The order was read, and agreed to, as follows:

*Ordered*, That the Senate sitting in the trial of impeachment of Charles Swayne, adjourn until Friday, the 10th instant, at 1 o'clock p. m.

The PRESIDING OFFICER (at 2 o'clock and 10 minutes p. m.). The Senate sitting in the trial of the impeachment of Charles Swayne stands adjourned until the 10th day of February at 1 o'clock p. m.

The managers on the part of the House and counsel for the respondent retired from the Chamber.

The President pro tempore resumed the chair.

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HOUSE OF REPRESENTATIVES, *March 3, 1905.*

[Congressional Record, volume 39, part 4, page 3988.]

THANKS TO HOUSE IMPEACHMENT MANAGERS.

Mr. SHERLEY. Mr. Speaker, I ask unanimous consent for the present consideration of the following resolution.

The SPEAKER. The gentleman from Kentucky asks unanimous consent for the present consideration of a resolution which will be reported by the Clerk.

The Clerk read as follows:

*Resolved*, That the thanks of the House be, and are hereby, extended to the managers on behalf of the House in the impeachment proceedings of Judge Charles Swayne before the Senate of the United States, to wit, Henry W. Palmer, Samuel L. Powers, Marlin E. Olmsted, James B. Perkins, David A. De Armond, Henry D. Clayton, and David H. Smith, for the able and efficient manner in which they discharged the onerous and responsible duties imposed upon them.

The SPEAKER. Is there objection?

There was no objection.

The resolution was agreed to.

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